No. 339

Office - Supreme Court, U.S.
FILED
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JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 12073

AL BIERMAN and WILLIAM MILLER,
Plaintiffs-Appellees,

vs.

SAMUEL MARCUS,
Defendant-Appellant and Cross Claimant-Appellant,

and

MILMAR ESTATE, INC., a corporation organized under the laws of the State of New Jersey,
Defendant-Appellee.

AL KEVELSON,
Defendant on Cross Claim-Appellee.

Civil Action (No. 1026-50)

On Appeal from Final Judgment of the United States District Court for the District of New Jersey

Sat Below: Modarelli, U.S.D.J.

APPENDIX TO BRIEFS FOR APPELLEES

CHAZIN & CHAZIN,
Attorneys for Plaintiffs-Appellees,
30 Journal Square,
Jersey City, New Jersey.

MAURICE C. BRIGADIER,
Attorney for and of Counsel with Defendant-Appellee, Milmar Estate, Inc.,
40 Journal Square,
Jersey City 6, New Jersey.

GEORGE KESSELHAUT,
Attorney for Defendant on Cross Claim-Appellee,
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APPENDIX

Additional Relevant Docket Entries

* * *

1-15-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 1-22-51, filed (Fake)

1-22-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 1-29-51, filed (Fake) Notice mailed.

1-29-51 Ordered hearing on application to discharge plaintiffs from liability adjourned. Consent order to be signed (Fake)

1-29-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 2-19-51, filed (Fake) Notice mailed.

* * *

2-20-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 3-26-51; and extending time to answer to 4-.. 51, filed. (Modarelli)

* * *

3-26-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 4-23-51; and extending time to answer to 4-23-51, filed (Modarelli) Notice mailed.

* * *

4-23-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 5-14-51; and extending time to answer to 5-14-51, filed 4-20-51 (Modarelli) Notice mailed.

* * *

Additional Relevant Docket Entries

5-14-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 6-25-51; and extending time to answer to 6-25-51, filed 5-11-51 (Modarelli) Notice mailed.

* * *

6-20-51 Consent order extending date for hearing on application to discharge plaintiffs from liability to Oct. 22, 1951 and extending time to answer to Nov. 2, 1951 filed 6-19-51. (Modarelli) Notice mailed.

* * *

10-19-51 Consent order adjourning hearing on application to discharge plaintiffs from liability; and extending time to answer to 11-26-51, filed 10-18-51 (Modarelli) Notice mailed.

* * *

11-20-51 Consent order adjourning hearing on application to discharge plaintiffs from liability to 1-14-52; and extending time to answer to 1-14-52, filed 11-19-51 (Modarelli) Notice mailed.

* * *

12-14-51 Notice of motion for extension of time for Samuel Marcus to answer, etc., and affidavit of service, filed (ret. 1-14-52)

* * *

1- 2-52 Order adjourning hearing on order to show cause, and extending time to answer until after depositions, filed (Modarelli) Notice mailed.

* * *

4- 8-52 Notice of motion to terminate or limit examinations of defendants, and acknowledgments of service, filed (ret. 4-28-52) (4-7-52)

* * *

Additional Relevant Docket Entries

7-14-52	Copy of letter-opinion denying motion to limit examination; granting motion to inspect books; and denying objections to interrogatories, filed 7-11-52
	• • •
3-26-53	Order denying motion to limit examination of Samuel Marcus; permitting inspection of documents, etc., denying motion to strike interrogatories, filed 3-25-53 (Modarelli) Notice mailed.
	• • •
5-27-54	Hearing on application to require witness to answer questions on deposition. Decision reserved. (Modarelli) (5-26-54)
	• • •
8- 6-54	Notice of motion to establish a time for the completion of the taking of all depositions and other pre-trial discovery proceedings; to direct Master to withdraw certain monies from bank for investment, etc., filed 8-5-54 (ret. 8-11-54) No brief submitted.
	• • •
8-13-54	Hearing on motion to establish a time for the completion of the taking of all depositions and other pre-trial discovery proceedings, etc. Ordered hearing continued to 8-12-54. (Modarelli) (8-11-54)
8-13-54	Affidavit of J. B. Hoffman, filed 8-12-54.
8-13-54	Continued hearing on motion to establish a time for the completion of all depositions and other pre-trial discovery proceedings, etc.
	• • •
8-23-54	Order authorizing payments from fund on deposit filed. (Modarelli) Notice mailed.

Additional Relevant Docket Entries

9-17-54	Notice of motion to vacate order of August 21, 1954, and acknowledgment of service, filed 9-16-54 (ret. Oct. 4, 1954)
9-17-54	Notice of motion to modify order of February 18, 1954, and acknowledgment of service, filed 9-16-54 (ret. Oct. 4, 1954)
10- 7-54	Notice of motion to modify order of February 18th, 1954 filed (ret. 10-25-54) (No Brief)
	• • •
7-24-56	Transcript of hearing on motions, 4-23-56, filed.
	• • •
9-24-56	Notice of motion of Samuel Marcus for summary judgment on certain counts of cross-claims of Milmar Estates, Inc., filed (ret. 10-8-56) (Brief submitted)
	• • •
10-25-56	Hearing on application for a stay of judgment and to fix amount of Supersedeas Bond. Decision Reserved. (Modarelli) (10-24-56)
	• • •
10-26-56	Memorandum filed. (Modarelli)
10-26-56	Transcript of hearing on motion for supersedeas bond filed.
	• • •
11-27-56	Consent order directing Master to pay certain monies to the Internal Revenue, filed (Modarelli) Notice mailed.
11-27-56	Consent order allowing fee to Master, filed (Modarelli) Notice mailed.
11-29-56	Order denying Summary Judgment filed 11-28-56. (Modarelli) Notice mailed.
	• • •

Additional Relevant Docket Entries

2-18-57	Transcript of hearing on application for a stay of judgment and to fix amount of Supersedeas bond, filed
2-18-57	Supplement to memorandum of Milmar Estate, Inc., filed
2-18-57	Second Deposition supplement to memorandum of Milmar Estate, Inc., filed
2-18-57	Fourth Supplemental Record on Appeal forwarded to Clerk, USCA.

• • •

Excerpt from Complaint*

(Filed—December 28, 1950)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Docket No. 1026—50

Civil Action

AL BIERMAN and WILLIAM MILLER,

Plaintiffs,

—v.—

SAMUEL MARCUS and MILMAR ESTATE, INC., a corporation organized under the laws of the State of New Jersey,

Defendants.

• • •

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* To correct misquotation at 12a.

Excerpt from Complaint

WHEREFORE, plaintiffs pray:

* * *

3. That the plaintiffs, upon payment into the Registry of this Court of the sum of Fifteen Hundred ($1,500.00) Dollars and interest thereon, may be adjudged to be discharged from all liabilities to said defendants, or any of them, as regards the said installment payment of $1,500.00 and interest thereon; and that as to each installment payment and interest thereon which shall be paid by the plaintiffs into the Registry of this Court, they may be adjudged to be discharged from all liability to the defendants, or any of them, upon such payment or payments being made into the Registry of this Court.

* * *

/s/ CHAZIN & CHAZIN
CHAZIN & CHAZIN
Attorneys for Plaintiffs,
30 Journal Square,
Jersey City, N. J.

By: /s/ ABRAHAM CHAZIN
ABRAHAM CHAZIN
A Member of the Firm.

Order

(Filed—December 28, 1950)

The plaintiffs having filed their Complaint in Interpleader under Title 28, U. S. Code, Section 1335, and the plaintiffs having deposited with the Registry of this Court, the sum of $1700.00, being the amount of the $1500.00 installment which will become due on January 1st, 1951, as set forth in

the Complaint, and sufficient monies to pay the interest thereon, and it appearing that the defendant, Samuel Marcus, is a citizen and resident of the State of New York, and that the defendant, Milmar Estate, Inc., is a citizen and resident of the State of New Jersey, and of the District of New Jersey, and that the value of the obligation involved in this case exceeds $500.00, and that the defendants, of diverse citizenship as defined under Title 28, U. S. Code, Section 1332, are claiming or may claim to be entitled to the money or to the benefit or benefits arising by virtue of the obligations of the plaintiffs to pay the said installment of $1500.00 with interest thereon, and the subsequent installments as they become due, totalling the principal sum of $35,000.00, besides interest, and good cause appearing,

THEREFORE, it is on this 28th day of December, 1950, on motion of Chazin & Chazin, attorneys for the plaintiffs, by Abraham Chazin, ORDERED that:

1. The defendants, Samuel Marcus and Milmar Estate, Inc., and their respective officers, agents, servants, employees and attorneys, be and they hereby are pending this suit and until further order of this Court, enjoined and restrained from instituting or prosecuting any proceeding in any State or United States Court affecting the obligation involved in this interpleader action, to wit: The obligation of the plaintiffs to pay $1500.00 on January 1st, 1951 and interest thereon, and the obligations of the plaintiffs to make additional payments, all totaling $35,000.00 with interest thereon, as set forth in the complaint, said sum of $35,000.00 being the balance of the purchase price on the purchase of the stock of Milmar Estate, Inc.

2. That the process of this Court be issued for all the defendants to appear in this case.

Order

3. That the defendants interplead and determine their rights to collect the obligation described in the complaint and the installments thereof.

4. That the defendants and each of them and their respective officers, agents, servants, employees and attorneys be and they hereby are restrained until further order of this Court from declaring an acceleration default of the balance of the said purchase price and from demanding the return by Abraham Lieberman, Esq., Escrow Agent, to the Seller of the stock deposited with him, and that the restraint against calling an acceleration default and against demanding of said Escrow Agent the return of the said stock as aforesaid continue so long as the plaintiffs deposit with the Registry of this Court on or before the time or times that the same shall become due, the various installments of principal of the said obligation, together with interest thereon.

5. That the said defendants show cause before this Court in the Federal Building in the City of Newark on the 15th day of January, 1951 why the plaintiffs should not be discharged from further liability as to the installment with interest deposited by the plaintiffs with the Registry of the Court, and as to any further installments that the plaintiffs shall deposit with the Registry of the Court, and why the Court should not grant such other relief as may be appropriate, including a judgment requiring the defendants to interplead, and why the injunction and restraint contained in this Order should not be made permanent.

6. That a true copy of this Order be served upon each of the respective defendants, or their attorneys, within six days from the date hereof.

/s/ THOMAS F. MEANEY
Judge U.S.D.C.

Order

(Filed—January 15, 1951)

It appearing that an Order was entered on the 28th day of December, 1950, ordering that:

1. The defendants, Samuel Marcus and Milmar Estate, Inc., and their respective officers, agents, servants, employees and attorneys, be and they hereby are pending this suit and until further order of this Court, enjoined and restrained from instituting or prosecuting any proceeding in any State or United States Court affecting the obligation involved in this interpleader action, to wit: The obligation of the plaintiffs to pay $1500.00 on January 1st, 1951 and interest thereon, and the obligations of the plaintiffs to make additional payments, all totalling $35,000.00 with interest thereon, as set forth in the complaint, said sum of $35,000.00 being the balance of the purchase price on the purchase of the stock of Milmar Estate, Inc.

2. That the defendants interplead and determine their rights to collect the obligation described in the complaint and the installments thereof.

3. That the defendants and each of them and their respective officers, agents, servants, employees and attorneys be and they hereby are restrained until further order of this Court from declaring an acceleration default of the balance of the said purchase price and from demanding the return by Abraham Lieberman, Esq., Escrow Agent, to the Seller of the stock deposited with him, and that the restraint against calling an acceleration default and against demanding of said Escrow Agent the return of the said stock as aforesaid continue so long as the plaintiffs deposit with the Registry of this Court on or before the time or times that the same shall become due, the various installments of principal of the said obligation, together with interest thereon.

Order

And it further appearing that the defendants were ordered to show cause before this Court in the Federal Building in the City of Newark on the 15th day of January, 1951 why the plaintiffs should not be discharged from further liability as to the installment with interest deposited by the plaintiffs with the Registry of the Court, and as to any further installments that the plaintiffs shall deposit with the Registry of the Court, and why the Court should not grant such other relief as may be appropriate, including a judgment requiring the defendants to interplead, and why the injunction and restraint contained in this Order should not be made permanent,

And defendant, Samuel Marcus, by his Attorneys, Hannoch & Lasser, by Aaron Lasser, Esq. having applied for an adjournment of the hearing on the order to show cause, and all the parties having consented to this order,

It is on this 15th day of January, 1951, on motion of Chazin & Chazin, Attorneys for plaintiffs, by Abraham Chazin, Esq.,

ORDERED that the date for the hearing on said order to show cause be and hereby is extended to the 22nd day of January, 1951, at 10:00 o'clock in the forenoon or as soon thereafter as the Court may attend to the matter, and that the Order of the 28th day of December, 1950, be and hereby is continued in all other respects and that the defendants and each of them and their respective officers, agents, servants, employees and attorneys be and they hereby are restrained and enjoined in accordance with the aforesaid Order until further order of this Court.

/s/ GUY L. FAKE
Judge U.S.D.C.

Order

We hereby consent to the entry of the within Order.

/s/ HANNOCH & LASSER
Hannoch & Lasser

By: /s/ AARON LASSER
Aaron Lasser
Attorney for defendant,
Samuel Marcus

/s/ CHAZIN & CHAZIN
Chazin & Chazin

By: /s/ ABRAHAM CHAZIN
Abraham Chazin
Attorney for plaintiffs,
Al Bierman and
William Miller

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for defendant,
Milmar Estate, Inc.

Order

(Filed—January 2, 1952)

This matter being opened to the Court by Robert D. Grosman, Esq., attorney for the defendant, Samuel Marcus, and consent to the entry of the following order being hereunder noted by Chazin & Chazin, attorneys for plaintiffs, and Maurice C. Brigadier, attorney for Milmar Estate, Inc.; and it being represented that the defendant, Samuel Marcus is unable to file an answer to the complaint exhibited against him herein without the taking of depositions; and

Order

it being represented that the defendant, Samuel Marcus, cannot answer the order to show cause made herein on the 28th day of December, 1950, which has from time to time been continued; and the Court being satisfied with the sufficiency of this application:

It is, on the 2nd day of January, 1952

ORDERED:

1. That the time for the hearing of the order to show cause made herein on the 28th day of December, 1950, which has been continued from time to time, be and is hereby extended and continued the first motion day (of which notice shall be given) following thirty days after the termination of the taking of the aforementioned depositions by the defendants, Samuel Marcus and Milmar Estate, Inc., and by the plaintiffs, Al Bierman and William Miller; and that the order of the 28th day of December, 1950 be and is hereby continued in all respects and that the defendants and each of them and their respective officers, agents, servants, employees and attorneys be and they are hereby restrained and enjoined in accordance with the aforesaid order until the further order of this Court.

2. That the time within which the defendants, Samuel Marcus and Milmar Estate, Inc., shall answer or otherwise move with regard to the complaint is likewise extended and continued until 30 days after the termination of the taking of depositions by the defendants, Samuel Marcus and Milmar Estate, Inc. and by the plaintiffs, Al Bierman and William Miller.

/s/ ALFRED E. MODARELLI
Judge, U.S.D.C.

Order

We hereby consent to the entry of the above order.

CHAZIN & CHAZIN
Attorneys for Plaintiffs

By /s/ ABRAHAM CHAZIN
Abraham Chazin
A Member of the Firm

/s/ ROBERT D. GROSMAN
Robert D. Grosman
Attorney for Defendant, Samuel Marcus

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for Defendant, Milmar Estate, Inc.

Excerpts from Notice of Application to Terminate or Limit Examinations

(Filed—April 8, 1952)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Docket No. 1026-50

Civil Action

AL BIERMAN and WILLIAM MILLER,
Plaintiffs,

—v.—

SAMUEL MARCUS and MILMAR ESTATES, INCORPORATED, a Corporation organized under the rules of the State of New Jersey,
Defendants.

Excerpts from Notice of Application to Terminate or Limit Examinations

To: MESSRS. CHAZIN & CHAZIN,
Attorneys for Plaintiffs,
Al Bierman and William Miller,
30 Journal Square,
Jersey City 6, New Jersey.

And: MAURICE C. BRIGADIER, Esq.,
Attorney for the defendant,
Milmar Estates, Inc.,
26 Journal Square,
Jersey City 6, New Jersey.

GENTLEMEN:

PLEASE TAKE NOTICE that on Monday, the 28th day of April, 1952, at the hour of 10:00 o'clock in the forenoon, (E. S. T.), at the Federal Building in the City of Newark, I shall apply to the United States District Court for the District of New Jersey, for the following relief in this case:

1. That the examination of the defendant, Samuel Marcus on deposition, be terminated or limited for reason of the fact that the plaintiffs herein, and the defendant, Milmar Estates, Inc., a New Jersey Corporation, have conducted said examination in bad faith and in such manner as unreasonably to annoy, embarrass or oppress the said deponent.

2. Said application will be based upon the transcript of the testimony heretofore given in this case by the said defendant, Samuel Marcus, and upon his affidavit, hereto annexed.

AND TAKE FURTHER NOTICE, that at the same time and place, the defendant, Samuel Marcus, will apply to the Court for an order requiring the co-defendant, Milmar Estates, Inc., a New Jersey Corporation, to produce and permit the inspection, copying or photographing of all and

Excerpts from Notice of Application to Terminate or Limit Examinations

singular the said defendant's corporate records, books of account, papers, documents, and records of every nature or description, pertaining to the corporate affairs of the said Milmar Estates, Inc., defendant, or its business.

This notice is in substitution of notice served March 28, 1952, said notice being a nullity under the amended rules of this Court.

ROBERT D. GROSMAN
Attorney for Defendant, Samuel Marcus

Dated: April 3-52

Excerpts from Affidavit of Samuel Marcus, Annexed to Foregoing Notice to Terminate or Limit Examinations

STATE OF NEW JERSEY,
COUNTY OF ESSEX, *ss.*:

SAMUEL MARCUS, being duly sworn according to law, upon his oath deposes and says:

* * *

7. As I have previously stated, the plaintiffs' attorneys have examined me with an almost intolerable degree of minuteness. Every bit of information that could be possibly elicited from me, has been obtained.

* * *

/s/ SAMUEL MARCUS
Samuel Marcus

Sworn and Subscribed to
Before me this 1st day of
April, 1952.

/s/ DOROTHY THOMPSON
Notary Public of New Jersey
My Commission Expires April 6, 1953

Excerpts from Hearing of April 28, 1952

—62—

* * *

The Court: Well, doesn't Mr. Marcus have any records of his own of this transaction, at all?

Mr. Grossman: He has produced his record, your Honor, to the extent that he was able to find them. This thing goes back over a period of six years.

* * *

—65—

* * *

The Court: Well, we don't need a case to tell us that. If a man hasn't got the knowledge, we can't expect him to answer, and I do admit that in a transaction that took so long to culminate that it would be almost impossible to expect a man to remember all of the details of everything he did; but what puzzles me in this case, Judge, is that here is a man handing out thousands and thousands of dollars who kept no record himself, even in his check margins, or anything.

Mr. Grossman: He did keep some records. Those records he had he produced.

* * *

—80—

* * *

Mr. Brigadier: Just one last thing and I think it should be discussed with you. He still hasn't brought in all of his records. Why shouldn't he, since he is the first one to be examined—let's assume your Honor comes to the conclusion that he might look at the books. Shouldn't he bring in all his books, since he is the first one to be examined, and they haven't concluded their direct examination? Let us serve a subpoena upon him, because I can't compel him without the process of subpoena and notice is not sufficient.

Excerpts from Hearing of April 28, 1952

Let somebody serve him with a subpoena, either myself or Mr. Chazin. He is the first party being examined. Certainly he ought to produce his records before he is allowed to look at ours.

Mr. Tepper: That isn't necessary. The record will show, your Honor, that they did furnish him with a list of the documents that they wanted, the records that they wanted, but he came in from time to time, having found some, and produced them, and his last statement under oath was, "I have looked in every place that I can think of where these records are, in the warehouses, in the storerooms and so

forth; I have consulted with my former secretary, and I have been unable to find any additional documents."

The Court: Let me ask you, Mr. Tepper, did you ever permit your secretary to take your diary out of your office and keep it?

Mr. Tepper: Certainly not. But I don't recall what the testimony was, but I believe it was that Mr. Marcus said that "my former secretary apparently kept a personal diary of some sort and took it with her so that she could refresh her recollection about matters if she were questioned at some time in the future."

Mr. Brigadier: A personal diary of every check received from us?

• • •

Excerpts from Letter Opinion of Hon. Alfred E. Modarelli

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

chambers of
ALFRED E. MODARELLI
Judge

Newark 1, N. J.
July 7, 1952

• • •

Gentlemen:

The disposition of motions previously argued before this court follows:

• • •

Rule 33 states, "Any party may serve upon any adverse party written interrogatories • • •." Defendants are "adverse claimants" of a fund deposited into the registry of this court under Title 28, Section 1335. It is true that defendants are not denominated as adverse parties, but that they are adverse parties in fact, with sharply contested claims one against the other, is evident from a reading of the entire transcript of the depositions of Samuel Marcus and the hearing of the motions. Defendant, Milmar Estate, Inc., is a party proceeding in an adverse manner against defendant Marcus. The latter may serve the former with the interrogatories so long as they are not privileged and are relative to the subject matter of the litigation. This motion is denied.

An order will be submitted by the attorney for the prevailing party in accordance with the above findings.

Very truly yours,

/s/ ALFRED E. MODARELLI
Alfred E. Modarelli

• • •

Petition for Temporary Restraining Order and the Appointment of a Receiver*

(Filed—October 22, 1953)

Petitioner, Samuel Marcus is one of the defendants in the foregoing suit.

1. The Milmar Estates, Inc., a New Jersey corporation, is co-defendant, and one of the respondents herein.

2. This court has jurisdiction over all of the parties to the foregoing action named in the caption hereof.

3. The defendant, Milmar Estates, Inc., is a New Jersey corporation, and has issued and outstanding a total of 1250 shares of common stock.

4. On the 14th day of September, 1948, petitioner was, and claims to be the owner of approximately 1230 shares of the common stock of said defendant, Milmar Estates, Inc., of the aforementioned 1250 shares of common stock of said corporation issued and outstanding.

5. On the said 14th day of September, 1948, by trickery, deceit, and false representations made to him and specifically hereinafter set forth, by the plaintiff, William Miller, petitioner was fraudulently induced to agree to the sale of 625 shares of the capital stock of said corporation, for the sum of $125,000.00, payable in various installments.

6. The plaintiff, Al Bierman, is the owner of 20 shares of the common capital stock of Milmar Estates, Inc.

7. The plaintiff, William Miller, never acquired any of the shares of the stock of Milmar Estates, Inc.

---

* "Exhibit A", annexed to this Petition is omitted. This Exhibit is the same as Exhibit DM-22 printed in Appellant's Appendix at page 1996a, et seq.

Petition for Temporary Restraining Order and the Appointment of a Re .iver

8. In pursuance of said alleged agreement of September 14, 1948, petitioner, though not a party to said agreement, except in his capacity as president of Milmar Estates, Inc., deposited with one Abe Lieberman, of Union City, 625 shares of the capital stock of said Milmar Estates, Inc., owned by him individually, upon condition that the said Abe Lieberman was to hold the same in escrow, pending the full and complete performance of each and every covenant of said alleged contract, executed the 14th day of September, 1948, between the said Milmar Estates, Inc., and Al Bierman and William Miller.

9. Said agreement, dated the 14th day of September, 1948, between Milmar Estates, Inc., a New Jersey corporation, therein referred to as the "seller," party of the first part, and Al Bierman and William Miller, therein referred to as the "buyer," party of the second part, is so vague, indefinite, unintelligible, as to be null, void, and of no legal effect.

10. The contract of September 14, 1948 referred to herein was never and cannot be performed. Consequently, said 625 shares of stock of the Milmar Estates, Inc., deposited by petitioner with the said Abe Lieberman, in escrow, are, or should still be in his possession; and petitioner is entitled to the immediate and unconditional return of said 625 shares of the common stock of said Milmar Estates, Inc.

11. On said 14th day of September, 1948, when petitioner was induced to deposit said 625 shares of Milmar Estates, Inc., common capital stock with the said Abe Lieberman in escrow, as aforesaid, petitioner was the president and a director of the said Milmar Estates, Inc. Petitioner is still

the lawful president and a director of said Milmar Estates, Inc.

12. Said understanding between the plaintiffs and your petitioner was never reduced to writing, but in place thereof, a vague, indefinite and wholly ineffective agreement dated the 14th day of September, 1948, was prepared between Milmar Estates, Inc., a New Jersey Corporation, as seller, party of the first part, and Al Bierman and William Miller, buyers, parties of the second part, which is hereto annexed and marked Exhibit "A."

13. Said agreement of September 14, 1948, is wholly void, null and of no effect, because it not only failed to carry out the intent and agreement of the parties, but also because it was a product of trickery, deceit, fraud and misrepresentation practiced upon the petitioner by the plaintiff, William Miller and Al Bierman.

14. The trickery, deceit, fraud and misrepresentation, which petitioner alleges the plaintiffs, William Miller and Al Bierman practiced upon him, in order to induce him to enter into said abortive agreement of September 14, 1948, whereby he allegedly undertook to sell 625 shares of the capital stock of Milmar Estates, Inc., is inter alia, as follows:

(a) At all the times herein mentioned, the lands and premises of the defendant, Milmar Estates, Inc., a New Jersey corporation, were encumbered by a mortgage in the sum of originally $300,000, originally held by the Michael Realty Co. a New Jersey corporation, and assigned by it to Tessie Schlesinger and Julia Steinberger, payable in monthly installments of $5,000 each, together with interest at 4% on the unpaid balance to the date of payment.

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(b) Said lands and premises were occupied by Bill Miller's Riviera, a New Jersey corporation, as tenant.

(c) The affairs of said tenant corporation were, and still are controlled by the plaintiff, William Miller. The monthly payments of $5,000 each required to be made on account of said $300,000 mortgage, given to the Michael Realty Co., a New Jersey corporation, was to be paid from the rents payable by Bill Miller's Riviera, Inc., to Milmar Estates, Inc.

(d) William Miller represented to the petitioner that the business of Bill Miller's Riviera, Inc., was continuously falling off, and it could not continue to make its monthly rental payments to Milmar Estates, Inc. Because of these representations, your petitioner obtained permission from said mortgagees to pay $2500, instead $5,000 per month on account of the principal of said mortgage.

(e) William Miller continued to represent to your petitioner, not only that the business of Bill Miller's Riviera, Inc., a New Jersey corporation, tenant of said premises, was so poor that it would have to default on the payment of its rent entirely, but that Ben Marden insisted on the restoration of the original installments of $5,000 per month, in which event, the Milmar Estates, Inc., would be unable to pay even the reduced monthly installments on account of the mortgage default entirely thereon, in consequence whereof said mortgage would be foreclosed, and said Milmar Estates, Inc. would suffer a total and complete loss of its assets by reason of said foreclosure, and your petitioner would suffer a total loss of his investment.

(f) Plaintiff, William Miller, further represented to your petitioner, that he had interested one Al Kevelson in purchasing 625 shares of the capital stock of Milmar Estates, Inc., owned by petitioner, for the sum of $125,000.

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15. The statements and representations made to your petitioner by William Miller with respect to the inability of the tenant Bill Miller's Riviera, Inc. to pay its rent to Milmar Estates, Inc., and that the mortgagor demanded a restoration of the monthly payments of $5,000. were false, in fact, to the knowledge of the said William Miller; and made solely for the purpose of inducing your petitioner to agree to sell the aforementioned 625 shares of stock for a fraction of the value of said stock.

16. Petitioner relied upon the aforementioned representations made by William Miller to him, and agreed to sell the aforementioned 625 shares of stock, which he would not otherwise have agreed to do.

17. William Miller has never invested a dollar of his own money in the Milmar Estates, Inc., although upon the organization of said corporation, he agreed to equal the investment of your petitioner by contributing $100,000, which he failed to do, and later by agreeing to contribute $50,000, which likewise he failed to do.

18. Thereafter, on or about the 28th day of December, 1950, William Miller and Al Bierman, filed a complaint of interpleader against your petitioner and Milmar Estates, Inc., a New Jersey corporation, and obtained from this Honorable Court, a restraint against your petitioner, and the defendant, Milmar Estates, Inc., a New Jersey corporation from instituting or prosecuting any proceedings in any State or United States Court affecting the obligation involved in this interpleader action.

19. Subsequent to said 14th day of September, 1948, when said alleged agreement was entered into between the defendant, Milmar Estates, Inc., and the plaintiffs, and

your petitioner deposited in escrow with the said Abe Lieberman, his said 625 shares of common capital stock of Milmar Estates, Inc., the plaintiffs, William Miller and Al Bierman, wrongfully and unjustly, and without legal warrant or authority whatsoever, undertook to act, and are still acting as officers and directors of the said Milmar Estates, Inc., a New Jersey corporation.

20. Your petitioner charges that the said plaintiffs, William Miller and Al Bierman, were without power and authority to act as officers and directors of said defendant, Milmar Estates, Inc., a New Jersey corporation, and still are without such power and authority.

21. Notwithstanding their lack of authority so to do, the said plaintiffs, William Miller and Al Bierman, have proceeded to illegally manage the affairs of said corporation, Milmar Estates, Inc., to make contracts, and to do all and singular the several acts and things and perform the duties appertaining to the office of officers and directors of the said Milmar Estates, Inc., a New Jersey corporation.

22. At all the times herein mentioned, and at present, the defendant, Milmar Estates, Inc., a corporation of New Jersey was and still is the owner of certain lands and premises lying and being in the Borough of Fort Lee, in the County of Bergen and State of New Jersey, known as Lot #36 in Block 153, on the Tax Map of the Borough of Fort Lee.

23. On or about the 29th day of June, 1953, condemnation proceedings were instituted by the State Highway Commission of the State of New Jersey, against all the lands and premises owned by the defendant, Milmar Estates, Inc., a New Jersey corporation. Previous to the institution of

said condemnation proceedings, and since, the plaintiff, William Miller, and perhaps the plaintiff, Al Bierman, have undertaken to carry on negotiations with the State Highway Commissioner of the State of New Jersey, for the sale of the lands and premises owned by the defendant, Milmar Estates, Inc., a New Jersey corporation.

24. The said plaintiffs, William Miller and Al Bierman, are wholly without authority to carry on such negotiations, or to enter into any contract with the State Highway Commissioner of the State of New Jersey, or with anyone else, for the sale of the lands and premises owned by the defendant, Milmar Estates, Inc., a New Jersey corporation.

25. Petitioner is informed, and verily believes it to be true, that the State Highway Commissioner of the State of New Jersey, has offered to the said William Miller and Al Bierman, the sum of $700,000 for the lands and premises owned by the defendant, Milmar Estates, Inc.

26. The said offer has been refused by the said William Miller and Al Bierman, who have demanded according to your petitioner's information and belief, upwards of $1,000,000, for said lands and premises.

27. Condemnation commissioners have been appointed and have designated October 26, 1953, at the Courthouse in Bergen County, New Jersey, before the Hon. J. Wallace Leyden, Judge of the Superior Court of New Jersey, for the taking of testimony on the application for the State Highway Commissioner of the State of New Jersey for the condemnation of the lands of the defendant, Milmar Estates, Inc., a corporation of New Jersey.

28. The State Highway Commissioner of the State of New Jersey, has continued to negotiate with the said Wil-

liam Miller and Al Bierman, for the acquisition of the lands and premises owned by the Milmar Estates, Inc., a New Jersey corporation, although your petitioner has notified him that the said William Miller and Al Bierman, have no authority whatsoever to conduct such negotiations.

29. Your petitioner is fearful that notwithstanding his protests, the said State Highway Commissioner of the State of New Jersey, may conclude an agreement with the said William Miller and Al Bierman, wrongfully acting as officers and directors of the defendant, Milmar Estates, Inc., a New Jersey corporation, and pay over to the said William Miller and Al Bierman, as officers and directors of Milmar Estate, Inc., a New Jersey corporation, in which event your petitioner, as the owner of 1230 shares of the common capital stock of the defendant, Milmar Estate, Inc., a New Jersey corporation, of the total of 1250 shares of common capital stock of said corporation issued and outstanding, will suffer great, immediate and irreparable damage.

30. Your petitioner is informed, and verily believes it to be true and therefore charges, that the plaintiffs, William Miller and Al Bierman, and Milmar Estates, Inc., who are the respondents herein, are financially irresponsible, and if they are permitted to take into their possession as officers and directors of the defendant, Milmar Estates, Inc., a New Jersey corporation, the aforementioned sum of $700,000 or more, which may be paid to them by the State Highway Commissioner of the State of New Jersey, your petitioner will sustain great, immediate and irreparable injury, and will find himself without redress if said funds should be dissipated.

31. Petitioner is informed, believes it to be true, and therefore charges the fact to be, that William Miller and

Al Bierman are agents in this matter for Al Kevelson, who is the true party in interest herein.

32. A copy of the agreement of September 14, 1948 between Milmar Estates, Inc., a New Jersey corporation, and Al Bierman and William Miller, is hereto annexed, marked Exhibit A, and made a part hereof.

Your petitioner therefore prays that he be granted the following relief:

1. That the plaintiffs William Miller and Al Bierman and petitioner's co-defendant, Milmar Estates, Inc., a New Jersey corporation, its officers, directors, attorneys, agents and servants, all of whom are the respondents herein, be restrained and enjoined temporarily and until the final hearing of this cause, from acting in the capacity of officers and directors of the defendant, Milmar Estates, Inc.

2. That the above mentioned respondents be restrained and enjoined from continuing to negotiate with the State Highway Commissioner of the State of New Jersey, for the sale of the lands and premises of Milmar Estates, Inc., a New Jersey corporation, to the State of New Jersey.

3. That the above mentioned respondents or any of them, be restrained and enjoined from taking into their possession any monies whatsoever, which may be paid by the State Highway Commissioner of the State of New Jersey, for the lands and premises of the defendant, Milmar Estates, Inc., a New Jersey corporation.

4. That the State Highway Commissioner of the State of New Jersey be restrained and enjoined from paying over to the said Al Bierman and William

Miller, or to any other person purporting to be an officer or director of the Milmar Estates, Inc., a New Jersey corporation, or to the said Milmar Estates, Inc., a New Jersey corporation itself, any monies whatsoever for the acquisition of the lands and premises of the said Milmar Estates, Inc., until the further order of this court.

5. That a receiver be appointed to continue said negotiations with the State Highway Commissioner of the State of New Jersey for the sale or condemnation of the lands and premises owned by the defendant, Milmar Estates, Inc., and dispose of said monies as this Honorable Court may direct.

6. That petitioner may have such further and other relief as may be equitable and just.

ROBERT D. GROSMAN
Attorney for Petitioner

Verification of Samuel Marcus, Annexed to Foregoing Petition

STATE OF NEW YORK,
BOROUGH OF MANHATTAN, *ss.*:

SAMUEL MARCUS being duly sworn according to law upon his oath deposes and says:

1. I am the petitioner in the foregoing petition. The allegations of the petition are true to the best of my knowledge, information and belief. The said petition is made in truth and in good faith, and without collusion, for the causes set forth therein.

Verification of Samuel Marcus, Annexed to Foregoing Petition

2. The allegations thereof are made on my personal knowledge, except as otherwise stated and by reference are incorporated herein precisely as if repeated in words at length.

s/ SAMUEL MARCUS

Sworn and Subscribed to
before me this 22 day
of October, 1953.

s/ SARA M. STONE
Notary Public of New York

• • • • •

Order to Show Cause Why Preliminary Restraint Should Not Issue, and Receiver Pendente Lite Appointed

(Filed—October 30, 1953)

This matter being opened to the Court by Robert D. Grosman, Esq., Attorney for the Petitioner, Samuel Marcus, and the Court having read and considered the verified complaint filed herein:

It is on this 30th day of October, 1953, Ordered that William Miller, Al Bierman, Milmar Estates, Inc., who are the respondents herein, are hereby Ordered to show cause, at 10 o'clock in the forenoon (E. S. T.) on the 9th day of November, 1953, at the United States District Court Chambers, Federal Building, in the City of Newark, why the application for a preliminary restraint, and the appointment of a receiver pendente lite, as prayed for in the petition filed herewith, should not be granted; and

Verification of Samuel Marcus, Annexed to Foregoing Petition

It is further Ordered that a copy of the verified petition, which may be certified as such by the attorney for the petitioner, be served upon the respondents herein within 2 days from the date hereof.

s/ ALFRED E. MODARELLI
J.U.S.D.J.

Affidavit of William Miller

(Filed—November 9, 1953)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

WILLIAM MILLER, of full age, being duly sworn according to law upon his oath deposes and says:

I have made an affidavit in this cause in opposition to the petition of Samuel Marcus for appointment of a Receiver of Milmar Estate, Inc. and for restraint. The said affidavit is being presented by Milmar Estate, Inc. in opposition to the said petition. I personally reiterate the contents of the said affidavit and offer them in my personal opposition to the said petition.

/s/ WILLIAM MILLER
William Miller

Sworn and subscribed to
before me this 6th
day of November, 1953.

/s/ JAMES G. ROSS
James G. Ross,
Notary Public of New Jersey

(Seal)

Affidavit of William Miller

Affidavit of William Miller*

(Filed—November 9, 1953)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

WILLIAM MILLER, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am one of the plaintiffs in the action entitled as above and am a respondent in the petition filed by Samuel Marcus for appointment of a Receiver and for a restraint.

2. I am a stockholder, Secretary-Treasurer and director of Milmar Estate, Inc. Milmar Estate, Inc. is the owner of certain land, with the building thereon, known as The Riviera property, located in Fort Lee, New Jersey. This property was purchased by Samuel Marcus and me from Michael Realty Company by contract dated April 2nd, 1946. The property was conveyed by Michael Realty Company to Samuel Marcus and me by deed dated April 5th, 1946. By deed dated June 7th, 1946 Samuel Marcus and I conveyed this property to Milmar Estate, Inc. Milmar Estate, Inc. rented the property to Bill Miller's Riviera, Inc., a corporation of New Jersey, which operated the restaurant and nightclub business in the premises.

The property was encumbered with a mortgage originally in the amount of $300,000.00, which was a purchase money mortgage executed by Samuel Marcus and myself to Michael Realty Company.

3. The Riviera nightclub and restaurant were opened for business in about May, 1946. In December, 1946 Bill Miller's Riviera, Inc. was in bankruptcy proceedings in the

* All Exhibits Annexed to this Affidavit are omitted.

Federal Court, and in 1947 it made an arrangement with its creditors which called for payment to the creditors over a period of years.

4. In August and in the early part of September, 1948 Samuel Marcus, Al Bierman and I were the owners of all of the stock of Milmar Estate, Inc. My stock was pledged with Samuel Marcus as collateral for a $50,000.00 note. At that time and prior thereto the business of Bill Miller's Riviera, Inc., from which Milmar Estate, Inc. got its rent, was and had been bad. Riviera had not yet paid off the creditors from the bankruptcy arrangement proceedings. It did not have the necessary capital to put on the proper kind of shows and to hire the stars who would be necessary if the business of the Riviera was to be improved. Samuel Marcus told me that he was worried about his investment in Milmar Estate, Inc. and wanted to get out. He had tried without success to sell out his interest in Milmar Estate, Inc.

5. In or about August, 1948, I interested Mr. Al Kevelson in coming into Milmar Estate, Inc. and becoming financially interested in it. Al Bierman and I negotiated a deal with Samuel Marcus. Samuel Marcus was to get out of Milmar Estate, Inc. completely and cancel the $50,000.00 note of mine which he held. He was to receive $125,000.00, $30,000.00 in cash and the balance of $95,000.00 in installments. When we came to the actual closing, Marcus refused to go through with the deal unless he got more money, and I finally agreed to pay him an additional $15,000.00 in installments. On September 14th, 1948 a group of papers were signed to carry out this transaction. A copy of the agreement of sale is hereto annexed and made part hereof. The papers were signed at the office of Robert J. Schwartz, who was Samuel Marcus' attorney, and who was Secretary

of Milmar Estate, Inc. The transaction was this: Samuel Marcus was getting out, and all rights of the parties against each other were being wiped out, except the balance of the purchase price of $95,000.00 as a result of the sale, and an additional obligation of $15,000.00 which I, in writing, then agreed to pay to Samuel Marcus. All of the shares of stock were not physically present at the closing. Samuel Marcus said he could not find the stock certificates. The parties used the following mechanics: All of the issued and outstanding stock of Milmar, Inc., consisting of 1250 shares of stock, was marked cancelled on the stubs in the stock book. Four new certificates of stock in the total amount of 1250 shares, being two certificates of 500 shares each and two certificates of 125 shares each were issued to Samuel Marcus and by him endorsed in blank, and one-half of the stock, 625 shares was delivered in escrow to Abraham Lieberman, as security for the balance of the purchase price, and one-half of the shares was delivered without an escrow agreement.

The new certificates of stock nos. 17, 18, 19 and 20 were signed by Samuel Marcus, President, and Robert J. Schwartz, Secretary, and all endorsed in blank by Samuel Marcus. They are all dated September 14th, 1948. Photostats of these shares of stock are hereto annexed and made part hereof. At the same time both Samuel Marcus and Robert J. Schwartz signed resignations as officers and directors of Milmar Estate, Inc., which resignations are dated September 14th, 1948 and state that they are effective immediately. Photostats of these resignations are hereto annexed and made part hereof.

Upon Al Kevelson, Al Bierman and myself being the owners of all of the stock of Milmar Eestate, Inc., the stock division among us was to be and is as follows:

Al Kevelson	40%
William Miller	40%
Al Bierman	20%

That is the way in which all of the stock of Milmar Estate, Inc. is held.

Thereupon the following officers and directors were elected:

Officers:	President	Al Kevelson
	Vice President	Al Bierman
	Secretary-Treasurer	William Miller.

Directors: Al Kevelson, Al Bierman and William Miller.

6. Since September 14th, 1948 Al Kevelson, Al Bierman and I, as officers and directors of Milmar Estate, Inc. have conducted the business affairs of Milmar Estate, Inc. and have been in exclusive and complete control of its affairs.

Pursuant to the transaction of September 14th, 1948 we made payments to Samuel Marcus of the installments of $3,000. per month while the Riviera was operating and $1,500. per month when it was not operating, as called for by our agreement. After September 14th, 1948 numerous checks to Samuel Marcus were made by Milmar Estate, Inc. and signed by William Miller or Al Kevelson. Samuel Marcus endorsed or had endorsed and deposited these checks in his account. Photostats of these checks are annexed to the affidavit of Al Kevelson. Prior to September 14th, 1948 Samuel Marcus had been signing the checks of Milmar Estate, Inc. After that date he signed no checks and he took no part whatsoever in the business of Milmar. Prior to September 14, 1948 he was present at the Riviera at least several times every week during the business season which was generally from April to the middle of October, and often was present almost every day. Prior to September 14th, 1948 Samuel Marcus had been receiving and depositing rent check from Bill Miller's Riviera, Inc. and had been paying interest and amortization checks to the holder of the mortgage on the property. After September

14th, 1948 he ceased to do any of these things or to take any part in the affairs of the corporation.

7. As the contract of September 14th, 1948 for the sale of the stock of the corporation to William Miller and Al Bierman was made by Milmar Estate, Inc., as seller, and since the payments for this stock were being made to Samuel Marcus; Al Bierman and William Miller filed an interpleader suit in the United States District Court in December, 1950 in order to obtain an ajudication as to who was entitled to the payments, so that in the event that at some future date creditors of Milmar Estate, Inc. were unpaid, they should not be able to claim that Al Bierman and William Miller had failed to pay an obligation which they owed to Milmar Estate, Inc. Depositions of Samuel Marcus were taken in the said suit. Annexed hereto are excerpts from the said depositions. These excerpts from the depositions show the contradictory stories told by Marcus with regard to the ownership of the stock of Milmar Estate, Inc., and which stories are at variance with the written documents in the matter, and at variance with the allegations of Marcus in his petition for receivership. Up to the time that the interpleader suit was filed payments in the total amount of $90,000. were made to Samuel Marcus on account of the $125,000. purchase price, and since the filing of the interpleader suit, the amount of $35,000., being the balance of the $125,000. purchase price, was paid to the United States District Court, so that the full amount of $125,000. has been paid.

8. A question had arisen as to a possible outstanding right of dower in Sarah Marcus, wife of Samuel Marcus, in the real estate of Milmar Estate, Inc. known as The Riviera property, located in Fort Lee, New Jersey. When Samuel Marcus and William Miller executed a deed to Mil-

mar Estate, Inc. in 1946, their wives did not join in the deed. Sarah Marcus made a claim for dower. Milmar Estate, Inc., in January, 1951, started a suit in the Superior Court of New Jersey, Chancery Division, to have it adjudicated that Sarah Marcus had no interest by way of dower or otherwise in the real estate of The Riviera. Samuel Marcus took the position that he had no interest in that suit, that his wife acted for herself and that he had nothing to do with the conduct of the suit. At this time the interpleader suit was already pending. Before trial the said dower suit was settled by payment of the sum of $7,500. to Sarah Marcus, whereupon she surrendered all her claims in the property to Milmar Estate, Inc. Samuel Marcus did not object to the payment of this money by Milmar Estate, Inc. to Mrs. Marcus.

9. During a period of approximately one year, negotiations have been carried on by Walter Winne, Esq., as attorney of Milmar Estate, Inc. and by Al Kevelson, Al Bierman and myself as officers and directors of Milmar Estate, Inc. with the State of New Jersey, which has been seeking to take the Milmar Estate, Inc. property in condemnation. Samuel Marcus has known about this. In fact he knew when the sale of stock was made in 1948 that there might be a condemnation, as is shown by clause 12 of the contract dated September 14, 1948 which is hereto annexed and which mentions what is to happen in case of a condemnation. As a matter of fact, on October 20, 1952 Samuel Marcus caused to be filed a lis pendens in the Bergen County Clerk's Office, knowing that there was a condemnation pending or imminent, although I am informed by counsel that there is no legal warrant for the filing of a lis pendens by him.

10. At no time has Samuel Marcus returned or offered to return the money which was paid to him for the purpose

of the stock. This he has kept to his own use and has never returned it. He has never notified me that he is attempting to rescind the transaction.

11. The claim of Samuel Marcus that he is the owner of the stock, or any part of the stock, of Milmar Estate, Inc. is entirely and absolutely untrue as is shown above. As a matter of fact, in the depositions in which Samuel Marcus was sworn, he has told conflicting and absolutely contradictory stories about stock ownership of Milmar Estate, Inc., as shown in the annexed excerpts.

12. As to the allegations that I perpetrated a fraud or misrepresentation upon Samuel Marcus, that is absolutely false and without any foundation. I did not represent to Samuel Marcus that the business of Bill Miller's Riviera, Inc. was continuously falling off and that it could not continue to make its monthly rental payments to Milmar Estate, Inc. Samuel Marcus knew the business affairs of The Riviera very intimately. He was present at the club at least several days a week and often every day. He knew at all times exactly what was going on. Business was bad. He saw it. It was not necessary for me to tell him that business was bad. He knew it was bad. Of course, we kept discussing business, but I did not have to and did not make any representations to him, because he knew the business status of The Riviera as well as I did.

13. After the date of the closing of our transaction (September 14th, 1948) our business conditions continued to be difficult, and we had difficulty in making the payments to creditors.

14. I deny the allegations of paragraph 14(e) of the Petition. I did not represent to Sam Marcus that Ben Marden insisted on the restoration of the original install-

ments of $5,000. per month. From the very beginning Mil-Mar Estate, Inc. was unable to make the payments of $5,000. per month called for by $300,000. purchase money mortgage held by Michael Realty Company. Each year we had approached Ben Marden, explained to him our difficult financial situation and asked him to cut the mortgage payments. As a matter of fact, Samuel Marcus states in paragraph 14(d) of the Complaint that he had obtained permission from the mortgagees to pay $2,500. instead of $5,000. per month on account of the principal of the said mortgage. Samuel Marcus had been in touch with the mortgagees and they were just as available to him as they were to me. In fact, he had been signing and sending the Milmar checks to the mortgagees up to that time. For a five-cent phone call he could have talked to Marden, or he could have gone to see him. It is untrue that I made any misrepresentations in this connection or that Samuel Marcus relied on anything I told him. I did not in any way use trickery, deceit, fraud or misrepresentation upon Samuel Marcus, but I believe and charge that he is now attempting to use trickery, deceit, fraud and misrepresentation in his wrongful attempt to obtain the appointment of a Receiver.

15. Samuel Marcus has no ownership whatsoever in the stock of Milmar Estate, Inc. He is merely trying to "horn in" after he sold out.

16. As to the petition of Samuel Marcus, taking the same paragraph by paragraph:

As to paragraph 1, the affiant admits that Milmar Estate, Inc. is a co-defendant, and that it is named as a respondent in the petition of Marcus.

As to paragraph 2, petitioner is left to his proof.

Paragraph 3 is admitted.

Paragraph 4 is denied, and affiant states that Samuel Marcus owns no shares of the stock of Milmar Estate, Inc.

Paragraph 5 is denied.

Paragraph 6 is inaccurate. It does not state the true stock ownership of Al Bierman. He owns 20% of the stock of Milmar Estate, Inc., to wit, 250 shares.

17. Paragraph 7 is untrue and with reference thereto I annex hereto papers signed by Samuel Marcus, one dated June 14th, 1946 over the signature of Samuel Marcus, in which he acknowledges receipt of 500 shares of stock in Milmar Realty Inc. (meaning Milmar Estate, Inc.) "made out to the order of William Miller, and which is being assigned to me and held by me as collateral for the re-payment of certain demand notes which I hold". Annexed thereto is a list showing the stock certificates and the number of shares, totalling 500 shares of Milmar stock owned by me. Annexed hereto and made part hereof is a copy of a paper dated July 23rd, 1947, being an agreement between Samuel Marcus and William Miller stating that William Miller pledged his shares of stock to Samuel Marcus, and containing an agreement that in the event that either party shall desire to sell his stock he must give the first refusal to buy to the other party. From the very outset of Milmar Estate, Inc., Al Bierman and I together owned 50% of the stock of Milmar Estate, Inc. After the transaction of September 14, 1948, Al Bierman, Al Kevelson and I owned and now own all of the stock of Milmar Estate, Inc., namely, 1,250 shares.

18. As to paragraph 8 the affiant states that under the agreements of September 14th, 1948 all of the stock of Milmar Estate, Inc. became vested in William Miller and Al Bierman, and of the 1,250 shares issued and outstanding, 625 shares were placed in escrow with Abraham Lieberman, Esq.

Affidavit of William Miller

The allegations of paragraph 9 are denied.

19. As to paragraph 10 the allegation that the contract of September 14th, 1948 was never and cannot be performed is not true. Said agreement was performed. Furthermore, Samuel Marcus is not entitled to the return of any stock.

20. As to paragraph 11, Samuel Marcus is not the President or a director of Milmar Estate, Inc., he having resigned. A copy of his resignation is hereto annexed and made part hereof. Samuel Marcus does not own any stock in the corporation.

As to paragraph 12, the same is denied. The agreement between the parties has been performed.

21. As to paragraph 13, the agreements of September 14th, 1948 are valid and there was no trickery, deceit, fraud or misrepresentation practiced on Samuel Marcus by either William Miller or Al Bierman.

The affiant has previously denied the alleged misrepresentations set forth in paragraph 14 and repeats the denial.

22. Affiant denies the allegations of paragraph 17, and states that he executed a note of $50,000.00 to Samuel Marcus for affiant's investment. On September 14th, 1948 Samuel Marcus signed a paper addressed to William Miller which provides:

> "In the event that the contract of purchase, dated September 14th, 1948, is fulfilled, the said note of Fifty thousand ($50,000.00) Dollars is to be returned to you and we agree to exchange mutual releases."

Affiant states further that he was the directing force of the entire enterprise and that the enterprise could not be operated by Samuel Marcus without the affiant.

Affidavit of William Miller

Paragraph 18 is admitted.

23. As to paragraph 19, the stock deposited with Abraham Lieberman is deposited pursuant to the agreement of September 14th, 1948. William Miller and Al Bierman have properly and with the knowledge of Samuel Marcus acted as officers and directors of Milmar Estates, Inc.

Paragraph 20 is denied.

Paragraph 21 is denied. Affiant states that William Miller, Al Bierman and Al Kevelson have been and are legally and properly conducting the business of Milmar Estate, Inc.

Paragraph 22 is admitted.

As to paragraph 23, negotiations are being carried on with the State Highway Commission, as previously set forth in more detail in this affidavit.

24. Paragraph 24 is denied. William Miller and Al Bierman are officers and directors of Milmar Estate, Inc. and are acting by authority of the corporation.

As to paragraphs 25-26-27 and 28 as previously stated, William Miller and Al Bierman are properly carrying on negotiations with the State of New Jersey.

As to paragraphs 29 and 30 the affiant states that Samuel Marcus has no interest of any kind whatsoever in the said condemnation proceedings or negotiations and owns no stock whatsoever in Milmar Estate, Inc.

25. Affiant states that he, William Miller, Al Bierman and Al Kevelson are the owners of all of the stock of Milmar Estate, Inc.

26. Affiant believes and charges that the petition of Samuel Marcus is filed in bad faith for the purpose of

harassing the affiant and his associates and that there is no truth or merit to the petition.

/s/ WILLIAM MILLER
William Miller

Sworn and subscribed to
before me this 6th
day of November, 1953.

(SEAL)

/s/ JAMES G. ROSS
Notary Public of New Jersey

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Affidavit of Abraham Lieberman

(Filed—November 9, 1953)

UNITED STATES DISTRICT COURT

DISTRICT COURT OF NEW JERSEY

Docket No. 1026-50

Civil Action

AL BIERMAN and WILLIAM MILLER,

Plaintiffs,

—vs.—

SAMUEL MARCUS and MILMAR ESTATE, INC., a corporation organized under the laws of the State of New Jersey,

Defendants.

Affidavit of Abraham Lieberman

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

ABRAHAM LIEBERMAN, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am an attorney-at-law of the State of New Jersey.

2. On September 14th, 1948, a transaction involving the sale of the stock of Milmar Estate, Inc. was concluded at the office of Robert J. Schwartz, the attorney of Samuel Marcus, in New York City. William Miller, Samuel Marcus, Robert J. Schwartz and I were present. I represented William Miller and Al Bierman. Mr. Schwartz represented Samuel Marcus. There had been negotiations between the parties prior to this closing.

3. The essence of the transaction, boiled down to its simple essentials, was that: Samuel Marcus was selling out and getting out completely from Milmar Estate, Inc., that William Miller and Al Bierman were, upon completion of the transaction, to own all of the stock of Milmar Estate, Inc., consisting of 1,250 shares, that half of the stock consisting of 625 shares should be placed with me in escrow as security for payment of the balance of the purchase price, that a note of William Miller in the amount of $50,000.00 made to Samuel Marcus should, upon completion of the payment of the purchase price as provided under the contract dated September 14th, 1948, be returned to William Miller, and the parties should exchange mutual releases. There were other details, but in essence this is the main outline of the agreement.

4. The purchase price was $125,000.00, payable $30,000.00 upon execution of the agreement, and the balance of $95,000.00 in monthly installments of $3,000.00 per month when

the Riviera is open for business and $1,500.00 per month when it is closed.

5. The previously issued Milmar Estate, Inc. stock certificates were not at the closing. I had been informed by both Samuel Marcus and Robert J. Schwartz that they could not be located. The previously issued stock was marked cancelled on the stubs in the stock book. Four new certificates were issued in the name of Samuel Marcus, in the total amount of 1,250 shares, which was the total of the issued and outstanding stock, and were immediately endorsed in blank by Samuel Marcus and delivered, pursuant to the agreement, of which 625 shares were placed with me in escrow. The new stock certificates were signed by Samuel Marcus, as president and Robert J. Schwartz, as secretary. There was considerable discussion of the details, in which Samuel Marcus took an active part. He read all the papers carefully.

6. After the papers had been prepared for signature, at the last moment Samuel Marcus and William Miller agreed that William Miller personally would pay Samuel Marcus $15,000.00 in installments, and William Miller signed a paper so providing.

7. I reiterate and there is no question in my mind whatsoever that it was the intention of Samuel Marcus to sell out and get out completely from Milmar Estate, Inc.

/s/ Abraham Lieberman
Abraham Lieberman

Sworn and subscribed to
before me this 6th
day of November, 1953.

/s/ Barkave G. Elian
Barkave G. Elian
An Attorney at Law of N. J.

Affidavit of Al Bierman*

(Filed—November 9, 1953)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

AL BIERMAN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am one of the plaintiffs in the suit entitled as above, and I have been named a respondent in a petition by Samuel Marcus for a temporary restraining order and for the appointment of a receiver. I am making this affidavit in opposition to the said petition.

2. In August, 1948, together with William Miller, I negotiated with the said Samuel Marcus for the purchase from Samuel Marcus of all of the stock of Milmar Estate, Inc., owned by Samuel Marcus, which included all of the outstanding stock of the said corporation except that stock owned by William Miller and myself.

3. On August 27, 1948, Marcus and I were together at Bill Miller's Riviera, at Fort Lee, N. J., which was located on the property owned by Milmar Estate, Inc. On said date I had a discussion with Marcus in which he told me that he was anxious to get out of Milmar and that he was willing to sell all of his stock in the corporation, being all outstanding stock of Milmar Estate, Inc., except that stock owned by William Miller and myself, and get out completely from the corporation. We went upstairs to the Riviera office, and there we drew up a receipt, a copy of which is attached hereto and made a part hereof. The amount pro-

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* Photostat of Receipt Annexed to this Affidavit is omitted. This photostat is the same as Exhibit DME-3.

vided for in the first line was crossed out and the sum of $10,000 was written in. The change was initialed by Marcus and by me. The last line, which reads "Received two checks at $5,000 each" was written in. It was initialed by Marcus and myself. The words following that were crossed out, and that change was initialed by Marcus and myself. Marcus signed this paper and took the checks. While I was out of town, the sale was completed on September 14, 1948, and the said $10,000 was kept by Marcus and applied on account of the sale.

4. Since the commencement of the operation of Bill Miller's Riviera in 1946, Samuel Marcus was in intimate contact with its financial affairs and knew its business standing and operations on practically a day-to-day basis. Almost every time I came to the club (Riviera) in the evening, Marcus was present there.

5. Since September, 1948, I have never seen Samuel Marcus take any part in the conduct of the affairs of Milmar Estate, Inc. I am a stockholder, vice-president, and a director of Milmar Estate, Inc.

6. I never made any misrepresentation of any kind whatsoever to Samuel Marcus.

AL BIERMAN
Al Bierman

Sworn to and subscribed
before me this 4th day
of November, 1953.

EDITH B. WALTERS-STATEZNY
Edith B. Walters-Statezny
Notary Public of New Jersey
My Commission Expires Aug. 18, 1957

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Affidavit of Jacob Hoffman

(Filed—November 9, 1953)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

JACOB HOFFMAN, of full age, being duly sworn according to law, upon his oath deposes and says:

1. Since April 1946 I have been connected with Milmar Estate, Inc., as its accountant. I have also been the accountant for Bill Miller's Riviera, Inc., since its inception in 1946. In my capacity as accountant for the above corporations, I was in constant touch with William Miller and Samuel Marcus up to the time of the sale of the stock of Milmar Estate, Inc., by Samuel Marcus on September 14, 1948, regarding the financial affairs of the corporation.

2. From April 1946 to the middle of September, 1948, Samuel Marcus was intimately acquainted with the business operations of Milmar Estate, Inc., and of Bill Miller's Riviera, Inc. Samuel Marcus received from me at least once each week information regarding the business operations of Bill Miller's Riviera, Inc. During this period of time he was intimately acquainted with the financial and business affairs of Bill Miller's Riviera, Inc. on at least a week to week basis and very often on almost a day to day basis.

3. In December 1946 Bill Miller's Riviera, Inc., was in a very bad financial condition and filed a petition for arrangement under the Bankruptcy Act in the United States District Court for the District of New Jersey. In the early part of 1947 an arrangement was made in the United States District Court for the District of New Jersey to pay the creditors over a period of two years. In August

and September of 1948 some of the obligations which had been the subject of the arrangement were still partially unpaid and new liabilities had been incurred. The business of Bill Miller's Riviera, Inc. was in a bad financial condition and had been so for several years prior thereto. The obligations of Bill Miller's Riviera, Inc. in August and September of 1948 were approximately $175,000.00 and practically all of them were current obligations. As against this, the corporation had assets, current and fixed, of approximately $55,000. Bill Miller's Riviera, Inc. was getting along on a hand to mouth basis and was having difficulty meeting its bills. This difficult condition had existed since the time Bill Miller's Riviera, Inc. went into bankruptcy proceedings in December 1946 and prior thereto. Samuel Marcus knew these facts because of his intimate contact with the business. Below I am setting forth a statement of assets and liabilities of Bill Miller's Riviera, Inc. for the fiscal years ending March 31, 1947, March 31, 1948 and March 31, 1949:

Fiscal year ending March 31, 1947

Assets	$42,044.72	Liabilities	$139,253.47
	Deficit —	$ 97,208.75	

Fiscal year ending March 31, 1948

Assets	$54,241.55	Liabilities	$178,283.75
	Deficit —	$124,042.20	

Fiscal year ending March 31, 1949

Assets	$30,075.73	Liabilities	$159,480.93
	Deficit —	$129,405.20	

4. It was my practice and that of Mr. Marcus and Mr. Miller, from the start of the business of Bill Miller's Riviera, Inc. to see Mr. Ben Marden or Mr. Schimmel, his representative, to make arrangements with them to modify the requirements concerning mortgage payments, so that

$60,000.00 per year would not have to be paid as required on the mortgage. Generally, the arrangement made was to pay $30,000. per year in six payments of $5,000. per month each during the Club season, generally starting in May of the year. During 1947 and up to the time of the sale of stock in September 1948 it was Mr. Marcus' practice as the president of Milmar Estate, Inc. and because he had possession of the check book to write out the checks on the mortgage covering the Milmar Estate, Inc. property and to send the checks to the mortgagee in New York City.

5. Since September 1948 I have been connected with Milmar Estate, Inc. and with Bill Miller's Riviera, Inc. as accountant and have been in charge of the books and records of both corporations. Since the time in Sepembter 1948 when Mr. Marcus sold all his stock in Milmar Estate, Inc., and got out of Milmar, I have never known him to take part in any of the affairs or operations of Milmar Estate, Inc. After September 1948 I did not have anything to do with him regarding affairs of the corporation. After that date he did not sign any papers on behalf of the corporation, and never took part in the management of the business.

/s/ Jacob Hoffman
Jacob Hoffman

Sworn and subscribed to
before me this 6 day
of November, 1953.

(Seal)

/s/ James G. Ross
James G. Ross
Notary Public of New Jersey

Affidavit of Al Kevelson*

(Filed—November 9, 1953)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

AL KEVELSON, of full age, being duly sworn according to law upon his oath deposes and says:

I am President of Milmar Estate Inc. and am a stockholder and director of said corporation.

In or about September/1948 William Miller spoke to me concerning the purchase of an interest in Milmar Estate Inc. I told him that I would be interested in going into the corporation. After negotiations the deal was arrived at whereby Marcus was to get out completely for $125,000.00. As part of the deal a $50,000.00 note of Miller which Marcus held was to be cancelled. It was about that time that I received a phone call from Miller, who stated that he was with Marcus and that Marcus wants more than $125,000.00. Marcus got on the phone and I talked with him. I told Marcus that I would not agree to pay more than $125,000.00. Marcus said he wanted more. I then spoke with Miller and told him that I would not consent to more than $125,000.00. If more was to be paid he would have to pay the balance. Thereafter Miller personally agreed to pay Marcus an additional $15,000.00. The deal was that Marcus was getting out completely; that Miller and Bierman were getting all of the stock of the corporation which I was to share with them and the $50,000. note was to be surrendered. I became President and Director of the corporation and have served as such since that time. The deal was for the payment to Marcus of $30,000.00 at or before the closing of the deal

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* Photostatic copies of 22 checks Annexed to this Affidavit are omitted. These photostats are the same as Exhibit DME-32.

and the balance of $95,000. in monthly payments to be $3,000. per month when the Riviera was open for business and $1,500. per month when the Riviera was not open for business. In addition, Miller was to make installment payments on his $15,000. agreement. Thereafter, a number of checks were drawn by Milmar Estate Inc. in payment of the installments. Annexed hereto are photostatic copies of 22 checks from October 1948 through December 1, 1950 made to Sam Marcus by Milmar Estate Inc. signed by myself or William Miller as officers of Milmar Estate Inc. and endorsed and deposited by or on behalf of Sam Marcus. From the middle of September 1948 until the present time William Miller and I have been acting as officers and directors of Milmar Estate Inc. with the full knowledge of Sam Marcus. The receipt, endorsement and deposit of the aforesaid checks by him show his knowledge and approval of this course of action. Since the middle of September 1948, Marcus has not taken any part in the conduct of the affairs of Milmar Estate Inc. When a suit involving dower was brought against his wife in the latter part of 1950 by Milmar Estate, Inc., I spoke to Sam Marcus about it and told him that he should get his wife to sign the necessary papers. He offered no help whatsoever and did not offer to take part in the conduct of the litigation in any way whatsoever. He said he was in no way interested in the fact that there was an alleged dower claim outstanding in his wife, Sarah Marcus, and that this might affect the title of Milmar Estate, Inc. He said he had sold out. He never objected to the hiring of counsel by Milmar Estate, Inc. and the filing of a suit in the Superior Court of New Jersey, Chancery Division, to clear up this dower in question. He at no time questioned the authority of William Miller and of myself to act for Milmar Estate, Inc. He at no time claimed that we usurped our offices in Milmar Estate, Inc. He at no time objected to Milmar Estate, Inc. paying out $7,500. to his

wife, Sarah Marcus, in settlement of the dower litigation and in obtaining a release of any claims of dower right by a deed from Sarah Marcus to Milmar Estate, Inc., thus eliminating this title question. Marcus definitely understood that he had sold out completely and he knows that he has no stock or other interest whatsoever in Milmar Estate, Inc.

/s/ AL KEVELSON
Al Kevelson

Sworn to and subscribed
before me this 5th day
of November, 1953.

/s/ BARKAVE G. ELIAN
Barkave G. Elian
An Attorney at Law of New Jersey

* * *

Affidavit of Samuel Marcus

(Filed—December 28, 1953)

STATE OF NEW JERSEY,
COUNTY OF ESSEX, *ss.*:

SAMUEL MARCUS, being duly sworn according to law upon his oath deposes and says:

1. I am one of the defendants in the foregoing action, and the petitioner in the application for the appointment of a receiver, pendente lite.

2. I have read the affidavits of William Miller, Al Kevelson, Abraham Lieberman and Al Bierman.

Affidavit of Samuel Marcus

3. With respect to the affidavit of William Miller, I wish to say the following:

4. I deny that William Miller is a stockholder of Milmar Estates, Inc. Whatever office William Miller now claims to hold in the Milmar Estates, he holds as a usurper. The basis of my statement is this: Miller and I were to advance in equal shares, the monies required to purchase these lands and premises. I paid in over $100,000 Miller paid in nothing, except that he produced a check of $20,000 from Al Bierman. Originally, Miller was supposed to pay in the same amount as I. This he failed to do. Later he agreed to pay in $50,000, in addition to the $20,000 theretofore paid in by Bierman, upon the organization of the corporation. This he failed to do. He represented to me that he would have the $50,000 in the near future and requested that I take his note for $50,000 and set aside and retain in my possession, 500 shares of stock to be delivered when and if he paid me the aforementioned sum of $50,000. Accordingly, certificates for 500 shares of stock of Milmar Estates, Inc. were made out in the name of William Miller, endorsed by him in blank, and retained by me in pursuance of the aforementioned agreement. I still have the certificates for such 500 shares of stock issued in the name of William Miller, and endorsed by him in blank, and retained by me against the payment of the said $50,000. Said moneys never having been paid, I never delivered said certificates of stock to William Miller or anyone else from the time I received them, and I still retain the same in my possession.

5. With respect to the allegations of Paragraph 3, it is true that proceedings of the nature therein described, were had in 1946. This however was not the situation in 1948, when I was induced by William Miller to consent to the sale of my stock.

Affidavit of Samuel Marcus

6. In further amplification of my statement, I desire to say this: In light of subsequent happenings, I am firmly of the belief, and therefore charge, that practically from the inception of the nightclub business conducted by Bill Miller's Riviera, Inc., under the exclusive supervision of William Miller, the income of said business was never truthfully revealed. Such conduct on the part of William Miller, continued right down to the date when he induced me fraudulently as I have stated, to agree to sell my stock in Milmar Estates, Inc. It is my considered opinion, and therefore I charge the fact to be, that the books of Bill Miller's Riviera, Inc., never truthfully reflected the true financial condition of the business, but were manipulated by Bill Miller to show non-existing losses, as part of a scheme to depress the value of my stockholdings in Milmar Estate, Inc., and ultimately induce me to part therewith for a fraction of its value.

7. With respect to the allegation in Paragraph 4, I deny that in September, 1948, William Miller was the owner of any stock of Milmar Estate, Inc. As heretofore stated, he was privileged to purchase 500 shares of Milmar Estates, Inc., stock for $50,000, which privilege he never exercised. At no time did William Miller become the owner of or become entitled to said stock for reason of the fact that he never paid the $50,000 consideration therefor, or any part thereof.

8. I deny that at that time, the business of Bill Miller's Riviera, Inc., from which Milmar Estate, Inc., obtained its rent, was bad. It may be that the books of Bill Miller's Riviera, Inc., indicated a poor financial condition, but I am informed, believe it to be true, and therefore charge the fact to be, that said books did not truthfully set forth the financial condition of Bill Miller's Riviera, Inc., but to the

contrary, the income from said enterprise was purposely depressed by William Miller, acting individually and in a representative capacity, to trick me into selling my stockholdings in Milmar Estates, Inc. for a fraction of its true value.

9. It is not true that Bill Miller's Riviera was unable to put on the proper kind of shows. The Riviera enjoyed a national reputation for headline shows. They employed the finest talent in the Country.

10. It is true that I was worried about my investment; this because of the false representations constantly being made to me by William Miller and Al Bierman that the business of Bill Miller's Riviera, Inc., was unprofitable which representations were untrue.

11. With respect to Paragraph 5, I desire to say that this paragraph is replete with inaccuracies and half untruths. What actually happened was this:

12. William Miller and Al Bierman had consistently, over a period of time sought to convince me, and finally did convince me, that the business of Bill Miller's Riviera, Inc., was bad, and that said corporation, as tenant, would be unable to continue paying the rent which was being used for the purpose of paying the amortization on the mortgage covering the real estate owned by Milmar Estate, Inc. I realized that if such an eventuality came about my entire investment in Milmar Estate, Inc., would be lost. Relying upon the false representations made to me by William Miller and Al Bierman, (hereinafter called Miller & Bierman), at a chance meeting I had with Bierman at the Riviera, I agreed to sell my individual stockholdings, amounting to 625 shares. These 625 shares were exclusive of the 500 shares of stock of Milmar Estate, Inc., earmarked for Wil-

liam Miller, and held by me to be delivered to him when and if he paid me the sum of $50,000, as he agreed to do. At a later meeting it was agreed that I was to receive the sum of $140,000 as consideration for the sale of 625 shares of Milmar Estates, Inc. In addition thereto, it was further understood and agreed that I was to be paid all of the moneys advanced by me to or on behalf of Milmar Estates, Inc., for legal fees, loans, and miscellaneous items.

13. The transaction did not include the sale of 125 shares of the capital stock of Milmar Estate, Inc. owned by Robert J. Schwartz, which I subsequently acquired by purchase.

14. The paper writing annexed to the affidavit of William Miller, and designated in Line 1 on Page 3 of his affidavit, as "a copy of the agreement of sale is hereby annexed and made a part hereof", in no wise remotely carried into effect the true agreement between me, Miller & Bierman, acting individually and as agents for Al Kevelson, and I deny that said paper writing referred to by William Miller in Line #1, page 3 of his affidavit, is a copy of said agreement, but charge that said agreement was unilaterally altered after execution, without my knowledge or consent, by the addition in paragraph 5, page 2, and again in Paragraph 10 at page 4, thereof, of the words "up to 50%", which alteration is further evidence of the fraudulent intent and purpose with which William Miller and Al Bierman, their agents and servants, have sought to defraud and victimize me.

15. It is true by said alleged agreement of September 14, 1948, which I have stated is not in fact the true agreement made by me with Miller and Bierman, that 625 shares of the capital stock of Milmar Estates, Inc., of which I was the owner on September 14, 1948, were deposited in

escrow with Al Lieberman. With the exception of 125 shares of stock of Milmar Estates, Inc., owned at the time by Robert J. Schwartz, all of the shares of stock of Milmar Estates, Inc., were present at the closing on September 14, 1948, to wit: 625 shares owned by me which I deposited with Al Lieberman in escrow; 500 shares of the common capital stock of Milmar Estates, Inc., also owned by me, subject to Miller's option to purchase if and when he paid me the sum of $50,000 therefor. I deny that I said that I could not find the stock certificates. With the exception of the certificates owned by Robert J. Schwartz, I had all of the Certificates there. There was no reason for Mr. Schwartz to have his certificates at the conference because he was not party to the transaction and was not selling his shares.

16. I deny stating that I could not find the stock certificates. I deny the "mechanics" described in paragraph 5, of William Miller's affidavit.

17. I deposited with Al Lieberman, 625 shares of Milmar Estate common stock. This was all of the shares of stock that I was required to deposit under my agreement with Miller & Bierman, and was all of the shares of stock that I was selling to them for the sum of $140,000.

18. I deny that four new certificates of stock in the total amount of 1250 shares of Milmar Estates, Inc. were to be issued to anyone. The certificates annexed to Miller's affidavit bear my signature; I must have signed them unwittingly and unknowingly in the "group of papers" referred to on the last line of Paragraph 5 of William Miller's affidavit, on page 2 thereof, and the execution of said certificates of stock was accomplished by trickery, fraud and device, there being no agreement anywhere or

at any time for the execution and delivery of such certificates. The agreement of September 14, 1948, annexed to William Miller's affidavit (the substance of which instrument we charge to have been altered subsequent to execution), and also the escrow receipt issued by Abraham Lieberman under date of September 14, 1948, are both wholly silent with respect to the issuance of any new certificate of stock of Milmar Estates, Inc., which now Miller claims were in fact executed on September 14, 1948.

19. I have no recollection of having signed my resignation as president of Milmar Estates, Inc., on September 14, 1948, or at any other time. I was not required to resign under the terms of the agreement of September 14, 1948, annexed to William Miller's affidavit, and if such a document does exist, it must have been obtained by trickery and device on September 14, 1948, when I was called upon to sign a great number of papers. The escrow receipt executed by Abraham Lieberman under date of September 14, 1948, makes no mention of any resignations of officers of Milmar Estate, Inc., having been deposited with him. It merely refers to the resignation of officers of Bill Miller's Riviera, Inc.

20. I deny that Al Kevelson, Al Bierman and William Miller, ever became the owners of all of the stock of Milmar Estate, Inc., as charged, and the stock division among them was as charged in Paragraph 5 on page 4 of William Miller's affidavit.

21. If the persons named in the 5th paragraph of Miller's affidavit, on page 4 thereof, were in fact designated as officers and directors of Milmar Estates, Inc., they acted without legal authority, and were mere usurpers of the offices which they purported to hold.

22. As to paragraph 6, I have no knowledge or information whereon to form a belief as to whether or not Al Kevelson, Al Bierman, and William Miller conducted the business affairs of Milmar Estates, Inc. As to this charge, I place him upon his proof.

23. It is true that after September 14, 1948, payments were made to me in various amounts, on account of my stock, until the time when I was interpleaded by William Miller and Al Bierman, with Milmar Estates, Inc., in this Court. May I point out at this time that Al Bierman and William Miller in their capacity as plaintiffs, were also the officers of Milmar Estates, Inc., according to William Miller's affidavit. This fact was suppressed from this court at the time the application for leave to interplead me was made, and the restraints in this case were issued. As I have suspected all along, William Miller and Al Bierman and Al Kevelson trifled with this Court when they filed their complaint in this action, interpleading me with Milmar Estates, Inc., a corporation which they controlled, according to their own admission.

24. It is true that after September 14, 1948, I took no active part in the management of the affairs of Milmar Estates, Inc., because I relied upon the truth of the representations made to me by Miller, Bierman and Al Kevelson. It was until the interpleading action was filed in this Court, that my suspicions became aroused that I had been imposed upon by Miller & Bierman, in connection with the sale of my stock. I was unaware of the methods used by William Miller and Al Bierman, to accomplish their purpose to defraud me, but I felt that I had been defrauded. Thereafter, of course, I could take no action against them or the corporation, or to demand my rights as an officer and director of Milmar Estates, Inc., because

Affidavit of Samuel Marcus

I was restrained by the injunction of this court dated December 28, 1950.

25. I deny that Al Bierman and William Miller filed their interpleader complaint in this court in good faith. Miller's statement in this regard, in paragraph 7 of his affidavit, is absolutely contrary to the allegations made by him in Paragraph 5 of his affidavit. There he undertakes to state in unmistakable terms, that he and Bierman had agreed to buy the stock of Samuel Marcus, for $140,000.

26. In paragraph 7 of his affidavit, he professes to be in doubt as to who was entitled to the payment for said stock and states because of that fact he sought an adjudication in the interpleader suit filed by him in this court. This of course, cannot be true. William Miller and Al Bierman, Al Kevelson, undertook to act as officers of Milmar Estates, Inc. What they virtually did was to interplead themselves, because they were the Milmar Estates, Inc. corporation. They controlled it according to Miller's affidavit. Samuel Marcus had nothing to do therewith after September 14, 1948, so that Bierman and Miller used Milmar Estates, Inc., as a pawn for the purpose of tying up the remaining funds due to Samuel Marcus, according to their statement, by the injunctive orders of this court. All of these facts were suppressed and concealed by Bierman and Miller from this court at the time that they instituted their action for interpleader. These facts should have been made known to the court. I deny that Miller, Bierman and Kevelson, were the lawful officers and directors of Milmar Estates, Inc., but this of course has nothing to do with the representations made by these people in the complaint of the interpleader filed by Miller and Bierman.

27. With respect to the allegations of Paragraph 8, to the effect that I did not object to the payment of the settlement moneys to my wife, I admit this to be true. I did not concern myself with said suit.

28. As to Paragraph 9, I deny that I knew anything of the details of the negotiations between Walter Winne and others, acting for Milmar Estates, Inc., with the State of New Jersey. I admit that I filed a lis pendens, but this I did on the advice of my attorney in order to prevent a surreptitious sale of the realty of Milmar Estates, Inc., by Miller, Bierman and Kevelson, acting as pseudo officers of Milmar Estates, Inc.

29. As to the allegations of Paragraph 10, I deny that I never offered to return the money paid to me on account of the purchase price of 625 shares of the stock of Milmar Estates, Inc. The entire purchase price therefor was not paid to me. Subsequent to the filing of the interpleader suit (the balance of the money amounting to $35,000), was paid into this court. I have always been willing, and now reassert my willingness to refund to the Milmar Estates, Inc., all the moneys paid to me under the alleged contract of September 14, 1948 in payment of 625 shares of Milmar Estates, Inc., stock. This will be done in a formal manner upon the filing of my answer and counterclaim in this action, which will be done upon the completion of the discovery proceedings provided for by the rules of this court.

30. As to the allegations of Paragraph 11, they are denied. The excerpts annexed to William Miller's affidavit are taken out of context and the reading of the entire deposition given me by will indicate that there is no contra-

diction whatsoever in my statements with respect to my ownership of said stock.

31. As to the allegations contained in Paragraph 12, I can only state once again that William Miller by repeatedly misrepresenting to me the income of Bill Miller's Riviera, Inc., and repeatedly telling me that it would be unable to pay its rent to Milmar Estates, Inc., induced me to agree to the sale of 625 shares of my stock of Milmar Estates, Inc., which otherwise I would not have agreed to sell. The fact of the matter is that Bill Miller was to put up an equal amount of money with me. He maneuvered me into the position where I invested over $100,000 in the venture, while he invested nothing. In the first instance, Miller and I were supposed to each put up $100,000. He stated that he would definitely be able to secure $100,000. Based upon this understanding, I entered into the contract for the purchase of the realty involved and paid a deposit of $25,000. After I had done so, and after I was involved to the extent of $25,000, William Miller told me that he was unable to put up his $100,000 or any part thereof. He told me, however, that in the then near future, he would be able to put up $50,000, which he expected to receive from some investment he had in Luna Park, Coney Island. Being obligated on the contract by that time, I sought to make the best of a bad bargain, and agreed to permit him to contribute this reduced amount. When it came time for him to put up the $50,000, he said that he was unable to put any part of that amount. The result of all these machinations on the part of William Miller, was that I put up all of the moneys required for the purchase of the realty acquired by Milmar Estates, Inc., with the exception of $20,000, which Miller secured from Al Bierman and with the exception of $11,000 which Mr. Schwartz invested as the result of my solicitation.

William Miller did not put up a single penny from the time that he first agreed to put up $100,000, to the present date.

32. As to paragraph 13, I doubt the truth of the allegations contained therein, and place the said William Miller upon his proof.

33. As to paragraph 15, I deny that I am attempting to secure the appointment of a receiver for the use of trickery, deceit and fraud, but to the contrary charge that the receivership is absolutely necessary to preserve the subject matter of this suit, namely $750,000, which the State of New Jersey is prepared to pay for the acquisition of the title to the lands and premises owned by Milmar Estates, Inc.

34. As to paragraph 16, I deny that Al Bierman is the owner of 20% of the stock of Milmar Estates, Inc., to wit, 250 shares.

35. The allegations of paragraph 17 are denied. The factual situation with respect to the stockholdings in Milmar Estates, Inc., have already been detailed and require no repetition at this time, except to say that William Miller never owned any stock of the Milmar Estates, Inc., by reason of the fact that he never paid the consideration therefor as he was required and as he agreed to do.

36. Paragraph 18 is denied.

37. As to the allegations of paragraph 19, I can only again deny that the agreement of September 14, 1948, was performed or can be performed.

38. Paragraphs 20 and 21 are denied. I deny that the agreement between the parties has been or can be per-

formed. I deny further that said agreement is valid and assert that it was obtained by trickery, deceit fraud and misrepresentation.

39. Paragraph 22 is denied, excepting that I admit that William Miller was the directing force behind the enterprise. He used his position as such directing force to defraud and trick me out of my investment. The paper referred to by Miller was evidently requested by him in order that he be able to show Kevelson that the note was no longer in force. It was agreed by Miller and me that I held the 500 shares which had been issued in his name and endorsed by him to me, subject only to Miller's privilege to buy such shares from me for $50,000.

40. Paragraph 23 is denied, if William Miller in this allegation means that the stock deposited with Abraham Lieberman is the stock allegedly issued subsequent to the agreement of September 14, 1948. The stock deposited with Abraham Lieberman was the 625 shares of my stock issued to me prior to September 14, 1948.

41. I deny that William Miller, Al Bierman and Al Kevelson had been and are legally and properly conducting the business of Milmar Estates, Inc. They are usurpers and acting without lawful authority.

42. I admit that negotiations are being carried on by William Miller, Al Bierman and Al Kevelson, with the State Highway Commission for the sale of the lands and premises owned by Milmar Estates, Inc., which constitutes all of the assets of said corporation. This they have no right to do, and I have so advised the State Highway Commission, which is the major reason why I have petitioned for the appointment of a receiver to conserve the assets of Milmar Estates, Inc., until such time as this Honorable

Court may make a proper determination as to the issues in this case.

43. As to the allegations of Paragraphs 23, 24, 25, of William Miller's affidavit, I deny that the said William Miller, Al Bierman and Al Kevelson, are the owners of all of the stock of Milmar Estates, Inc., and that they are now acting as officers and directors of Milmar Estates, Inc., with authority or propriety. I repeat that I am the owner of all of the stock of Milmar Estates, Inc., with the exception of 20 shares of stock held by Al Bierman.

44. Paragraph 26 is denied.

45. As to the affidavit of Abraham Lieberman, I desire to say this: I deny that the transaction referred to involved the sale of "all of the stock of Milmar Estates, Inc.", and that the same was concluded. It merely involved the sale of my 625 shares. The sale did not include 125 shares of stock then owned by Robert J. Schwartz, which I subsequently acquired, nor 500 shares of stock earmarked for William Miller, if and when he paid me $50,000, as he had agreed to do.

46. I further deny that Abraham Lieberman acted as attorney for William Miller and Al Bierman alone. As escrow holder, he represented all of the parties concerned, including me.

47. I deny that Abraham Lieberman, in paragraph 3 of his affidavit accurately states the essence of the transaction. The best proof of this fact is the reading of the alleged agreement of September 14, 1948, which in no wise resembles or contains the provisions referred to by Abraham Lieberman in paragraph 3 of his affidavit.

48. As to paragraph 4, I admit this to be so with respect to 625 shares of Milmar Estates, Inc. stock, which I deposited with Mr. Abraham Lieberman in escrow.

49. With respect to the allegations of paragraph 5, I deny the necessary stock certificates were not at the closing. I had in my possession and delivered to Abraham Lieberman in escrow, 625 shares of the stock of Milmar Estates, Inc., and he issued his receipt therefor. Were the facts as he states, it would have been perfectly simple for him to have taken an affidavit or other writing from me and from the others present that the stock certificates in question were lost or missing. This he did not do because all of the required certificates were actually present and delivered to him, as evidenced by his said receipt.

50. I deny that I read all of the papers carefully. A large number of papers was given to me to sign. I assumed that they were correct, and I signed them. What I signed, I do not recall, but I do know that there was never any talk of the cancellation of the old stock and the issuance of new stock. I had 625 shares of stock of Milmar Estates, Inc., with me at the time; I delivered this stock, which was all of the stock involved, to Abraham Lieberman to hold in escrow.

51. The allegation in paragraph 3 of Abraham Lieberman's affidavit, to the effect "that half of the stock consisting of 625 shares should be placed with him in escrow as security for the payment of the balance of the purchase price * * * " is absolutely untrue. The copy of the contract of September 14, 1948, which bears the signature of the parties, and which was delivered to me, provides as follows:

> "The stock herein purchased by the buyer and endorsed in blank shall be deposited in escrow with Abe Lieber-

man, Esq., of 4000 Bergenline Avenue, Union City, New Jersey * * * ".

52. The photostated copy of said agreement of September 14, 1948, annexed to William Miller's affidavit indicates that in paragraph 5 there was inserted after the words "the stock", the following phrase in ink:

"up to 50%".

This addition is initialed in the margin, with the initials, A. L., whereas all other insertions and eliminations bear the initialing of both A. L. for Abraham Lieberman, and R. S., for Robert Schwartz. I charge that this contract has been altered after execution, without my knowledge for consent. A like alteration was made in paragraph "10" of the agreement.

53. I deny the allegations of paragraph 7 of Abraham Lieberman's affidavit, as to my intention, and again point to the radical difference between the contract of September 14, 1948, and Abraham Lieberman's and William Miller's references thereto. The alerations of the contract of September 14, 1948, in a substantial and material respect, is merely added proof of my charge that I was defrauded, and that I am entitled to have the subject matter of this suit preserved until the final hearing of this cause, with all the circumstances and ramifications of this case heard in detail.

54. With respect to the affidavit of Al Kevelson, I wish to say this: I deny that he is a lawful president of Milmar Estates, Inc., or a bona fide stockholder and director of said corporation.

55. I never had any negotiations directly with Mr. Kevelson. I never met him until some months after September

14, 1948, and never discussed any business matters with him until he visited me at my office in about September or October, 1951. He states on Page 1 of his affidavit that "As a part of the deal a $50,000 note of Miller which Marcus held was to be canceled". He is obviously stating what Miller told him. I do not doubt that Miller told him that because Miller had made such agreement with him as to prompt him to tell Kevelson that the note had been canceled while concealing from Kevelson the fact that he did not own any of the shares. As I have stated, Miller arranged with me that the 500 shares which had been issued in his name and endorsed by him to me will be held by me subject only to Miller's privilege to buy such stock from me for $50,000. As a matter of fact, when Mr. Kevelson saw me at my office in September or October, 1951, he told me that he was not interested in my troubles with Miller and that all he knew was that he bought 50% of the stock of the Milmar Corporation.

56. With respect to the affidavit of Al Bierman, I can only say again that $10,000 paid to me as evidenced by the writing of August 27, 1948, was merely preliminary to the purchase of my stock in Milmar Estates, Inc. It was in no sense a binding contract undertaking to sell, as a reading of said writing will clearly indicate.

57. My dealings with Al Bierman as the receipt dated August 27, 1948 indicates, was merely in the nature of "preliminary negotiations" for the sale of my stockholdings in Milmar Estate, Inc. At that time, for example, Robert Schwartz was the owner of 125 shares of stock of Milmar Estates, Inc., which I acquired subsequent to September 14, 1948. I could not have told Al Bierman that I was willing "to sell all of my stock in the corporation, being all outstanding stock of Milmar Estate, Inc., except that stock

owned by William Miller and myself, and get out completely from the corporation". This, of course, is what they now contend. It is a stilted phrase which runs through the affidavits of all of these people, and which I never used.

58. It is true that the writing dated August 27, 1948, was the result of the conversation which Al Bierman and I had one evening while we were drinking at the bar of the Riviera. I did not go upstairs with him as he states. He went upstairs himself, prepared the paper and brought it down to me at the bar, where I thereafter signed it. It is not a contract as will be observed from a reading thereof, and furthermore, the option, if it can be called one expired by its very limitations. It was to become operative only if a written contract was entered in pursuance thereof within ten days from August 27, 1958. The apology for a contract dated September 14, 1948, was of course entered more than ten days after the 27th day of August, 1948.

59. With respect to the affidavit of Jacob Hoffman, I wish to say this: I deny that he kept me informed of the affairs of Bill Miller's Riviera, Inc., as he states. I can only state once again, that I have been informed, I believe it to be true and therefore charge the fact to be, that the affairs of Bill Miller and his representatives, that they did not truthfully reflect the financial condition of that company. I, of course, had nothing to do with the bankruptcy and reorganization proceedings of Bill Miller's Riviera, Inc.

60. I deny that in September, 1948, I sold all of my stock of Milmar Estates, Inc., and got out, as this man says.

61. I wish to say further with respect to Jacob Hoffman. He had been my accountant for several months before I became interested in any ventures with William Miller. I introduced him to William Miller and he became the ac-

countant for Milmar Estates, Inc., and for Bill Miller's Riviera, Inc. He was known to my secretary. After the agreement of September 14, 1948, was signed I had possession of the minute and stock books of Milmar Estates, Inc. One day without my knowledge or consent, Jacob Hoffman came to my office in New York, during my absence, and requested my secretary to give him the books of Milmar Estates, Inc., which she did. What Jacob Hoffman has done with the corporate records of Milmar Estates, Inc., I do not know. He has failed to return them to me since the day that he obtained them under the circumstances I have stated.

62. This man is still in the employ of William Miller, and is completely subservient to him.

/s/ Samuel Marcus
Samuel Marcus

Sworn and subscribed to
before me this 21st day
of December, 1953.

/s/ Esther McDevitt
Esther McDevitt
A Notary Public of New Jersey

Notice of Motion for Restraint

(Filed—January 25, 1954)

To: Messrs. Chasin and Chasin,
Attorneys for plaintiffs
30 Journal Square
Jersey City, New Jersey

Maurice C. Brigadier, Esq.
40 Journal Square
Jersey City, New Jersey
Attorney for defendant, Milmar
Estates, Inc.

Please take notice that on Monday, January 25, 1954, at the hour of 10 o'clock in the forenoon (E. S. T.) at the United States District Court rooms, Federal Building, in the City of Newark, State of New Jersey, at the opening of the court on that day, or as soon thereafter as counsel can be heard, a motion will be made to restrain the plaintiffs and the defendant, Milmar Estates, Inc., a New Jersey corporation, their respective attorneys, agents and servants, jointly and severally from receiving or taking into their possession, the condemnation award of $757,410, made by the Commissioners in Condemnation in the suit of the State Highway Commissioner of the State of New Jersey, for the condemnation of the lands of Milmar Estate, Inc., a New Jersey corporation, or any part thereof, until the further order of this court.

Said application will be based upon the pleadings heretofore filed in the above action, and the affidavit hereto annexed.

Dated: January 19, 1954

/s/ Robert D. Grosman
Robert D. Grosman,
Attorney for Defendant,
Samuel Marcus

Affidavit of Samuel Marcus for Restraint Annexed to Foregoing Motion

STATE OF NEW JERSEY,
COUNTY OF ESSEX, *ss.*:

SAMUEL MARCUS, being duly sworn according to law upon his oath deposes and says:

1. I am one of the defendants in the foregoing action and the petitioner for the appointment of a receiver to take into his possession the proceeds of the condemnation of lands and premises owned by Milmar Estates, Inc., a New Jersey corporation, in an action instituted by the State Highway Commissioner of the State of New Jersey.

2. Heretofore, by virtue of proceedings duly had for the purpose, an order was made herein on the 30th day of October, 1953, requiring the plaintiffs herein and the defendant, Milmar Estates, Inc., a New Jersey corporation, to show cause on the 9th day of November, 1953, why an application for a preliminary restraint and the appointment of a receiver, pendente lite, as prayed for in the petitioner filed herein, should not be granted.

3. The hearing on the order to show cause was continued from time to time to the 25th day of January, 1954.

4. Thereafter, the defendant, Milmar Estates, Inc., obtained an ex parte order for the examination of one Robert Schwartz on the 19th day of January, 1954, at 2 o'clock in the afternoon. On said day, and hour, the said Robert Schwartz, appeared and refused to answer any questions intended to be propounded to him by counsel for Milmar Estates, Inc., on the ground that his knowledge of the subject matter, upon which he was to be interrogated, came to him in his capacity as attorney for Samuel Marcus,

the petitioner herein, and as such, he was privileged from being called upon to testify with respect thereto.

5. Thereupon, Maurice C. Brigadier, Esq., attorney for Milmar Estates, Inc., gave verbal notice that on Monday, January 25, 1954, he would appear before the Hon. Alfred E. Modarelli, United States District Court judge and apply for an order requiring the said witness to testify. No specific questions were put to the witness. He was merely informed generally as to the subject matter upon which he was to be interrogated.

6. Deponent has been informed, believes it to be true, and therefore charges the fact to be that on Friday, January 15, 1954, the Condemnation Commissioner appointed, in the suit of the State Highway Commissioner of the State of New Jersey for the condemnation of the lands of Milmar Estates, Inc., a New Jersey corporation, one of the defendants herein, filed a report herein that recommended that the said Milmar Estates Inc. be paid the sum of $757,410, as compensation for the condemnation of said lands and premises.

7. Deponent is unaware of whether the said Milmar Estates, Inc., a New Jersey corporation, or Al Bierman, William Miller and Al Kevelson, who have assumed control of the defendant, Milmar Estates, Inc., intend to accept said award. He fears, however, that they may do so, in which event, he will be left without remedy.

8. Deponent is informed and believes it to be true, that an application will be made on Monday, January 25, 1954, for a further adjournment on his application for an appointment of a receiver to take said funds into his possession. He fears that if a further adjournment is granted

Affidavit of Samuel Marcus for Restraint Annexed to Foregoing Motion

in this case, the defendant, Milmar Estates, Inc., William Miller, Al Bierman and Al Kevelson, or some of them, may accept said condemnation award, and thus render the instant proceedings academic.

9. Wherefore deponent respectfully requests that if, in the opinion of this Honorable court, the circumstances warrant a further continuance of his application for a restraint and the appointment of a receiver, the defendants, Milmar Estates, Inc., a New Jersey corporation, Al Bierman, William Miller and Al Kevelson, their attorneys, agents and servants, be jointly and severally restrained and enjoined from taking into their possession, the said award of $757,410, or any part thereof, until the further order of this court.

/s/ Samuel Marcus
Samuel Marcus

Sworn and Subscribed to
before me this 19th day of
January, 1954.

/s/ Estelle J. Lundy
Estelle J. Lundy
A Notary Public of New Jersey
My Commission expires
February 20, 1957

Excerpts from Hearing of January 25, 1954

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The Court: All right, No. 24, Al Bierman, and others, versus Samuel Marcus, and others; hearing on application for temporary restraint and appointment of receiver pendente lite. Mr. Grossman, Mr. Brigadier, Mr. Tepper, Mr. Kesselhaut and Mr. Chazin. As you speak please give

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your name and whom you represent so the court reporter can get it.

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Mr. Brigadier: If your Honor please, we served a subpoena duces tecum on Mr. Robert Schwartz, an attorney of the State of New York, member of the bar of the State of New York, for the purpose of taking his deposition to be used on the return of the order to show cause why a receiver should not be appointed. And at the taking of the deposition, as I will point out at great length in a moment, Mr. Schwartz refused to answer or testify until your Honor would first direct him to testify.

Now, may I say first, before I get to the heart of the problem, this, which I think your Honor should know:

Their client—by their client I mean Mr. Marcus, the defendant whom they represent—applied to your Honor on a verified petition for an order to show cause why a receiver should not be appointed. He filed a sworn statement reciting certain facts which, of course, your Honor must have relied upon in allowing the order to show cause.

That one statement of Mr. Marcus has been directly

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contradicted by affidavits that we filed in the cause, not

* All figures appearing throughout this transcript indicate page numbers of typewritten transcript.

only the affidavits of the plaintiffs, Al Bierman and William Miller, who are represented by Mr. Chazin, they are directly contradicted by the affidavits that have been filed by Mr. Kevelson, who is now represented, I understand, by Mr. Kesselhaut, directly contradicted by affidavits that were filed by the accountant, or made by the accountant, Mr. Hoffman, and directly contradicted by an affidavit made by Mr. Lieberman, Al Lieberman, a member of the bar of the State of New Jersey, known, I think, to your Honor as a former magistrate, I guess, of Weehawken.

The Court: Township of Weehawken.

Mr. Brigadier: As I say, here we had the one affidavit of Mr. Marcus alone. That affidavit, incidentally, and a reply affidavit that Mr. Marcus has since filed, charged all of these people not only with conspiracy to defraud, but charged them, as I see it, in very clear language with having committed perjury, forgery and a number of other crimes.

This includes, incidentally, the member of the bar of the State of New Jersey.

The Court: I might mention at this point, Mr. Brigadier, that I am firmly convinced in this case that somebody is committing deliberate and wilful perjury.

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Mr. Brigadier: I am absolutely in accord with you. I say there can't be the slightest doubt, either we are committing it or Mr. Marcus is. This is one case where there can't be any 'ifs', 'ands', 'buts', 'I meant' or 'I didn't mean'. There are direct assertions, direct contradictions. And I agree with your Honor that either Mr. Marcus has committed perjury of a very serious nature or Judge Lieberman, and all these people I have enumerated, have committed it.

It was at this point, when Mr. Marcus served a reply affidavit, that I became alerted to a doubt. I think anyone

would have been alerted to it by this time, if not long before it.

Mr. Marcus was represented in this transaction by an attorney, Robert Schwartz. Mr. Marcus testified not only that Schwartz had represented him, but in the course of the taking of the deposition both directly and indirectly stated that the papers that were presented to him for signature did not correspond with the instructions that he had given his attorney as to what should be in those papers.

The Court: That is a very serious charge, too, against the attorney.

Mr. Brigadier: There is not only an indirect charge, there are many direct charges, as I will point out, against his own attorney.

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In addition, Mr. Marcus said—and this became the crux of the case—in the deposition, and in the affidavits he has filed in this proceeding, that it is untrue, as we have stated, that he sold us all the stock on September 14, 1948, consisting of 1,250 shares, because it wasn't until after September 14, 1948 that he entered into a contract to purchase 125 of those shares that were owned by Robert Schwartz, and if he only purchased them from Schwartz after the date of the contract with us, how could he have possibly sold all the stock to us?

Sounds like a pretty good argument, if it is true. I think a very good one.

Therefore, I was doubly surprised that there was no affidavit submitted by them from Robert D. Schwartz, as the attorney, backing up Mr. Marcus, and as the person who sold this stock to Mr. Marcus after September 14, 1948.

At that point I went to Mr. Tepper and suggested that he go with me to Mr. Schwartz's office and that we con-

front Mr. Schwartz and get a statement from him as to what this transaction was.

Mr. Tepper said he would not go. Then later he said, "Well, I will take it up with Judge Grosman." He said, "At any rate, I won't go with you. If I go at all, it will be with Judge Grosman and with Marcus."

I said, "If that is what you want to do, that's all right

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with me; but go."

It seems to me, incidentally, that by this state they didn't have to wait for me to come to them to ask them to go to see Mr. Marcus. If I were the lawyer in the case—

The Court: Mr. Schwartz.

Mr. Brigadier: Mr. Schwartz. —or any other lawyer in the case, the first thing he would have done after this kind of testimony was given in the deposition, or this kind of affidavit about to be made, charging lawyers and everybody else with perjury, charging a lawyer with forgery, that at least some precaution would be taken by at least going to see this lawyer in New York.

The next thing I know I get a message from Mr. Tepper that they are not going, but they have served some kind of a letter on Mr. Schwartz making a demand upon him that he turn over to them any documents that he still had in his possession that he had not turned over and that they were led to believe—I think something to that effect, Mr. Tepper told me—that they were led to believe that he had such evidence.

Whereupon I went to see Mr. Schwartz myself. Now, the problem I was immediately confronted with when I went to see Mr. Schwartz is that Mr. Schwartz said, "Mr. Brigadier, this is involved in an attorney-client relation-

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ship, confidential relationship. There are certain papers in my possession. I can not exhibit them to you until the Court rules upon them."

Excerpts from Hearing of January 25, 1954

I then pointed out to him that there couldn't be privilege in many of these situations because, first, I wanted to question him about the transaction that took place in his presence and in the presence of Judge Lieberman, the two plaintiffs, and Mr. Marcus. Certainly if there is any Hornbook law that is settled it is that anything that took place in the presence of the opposing parties is not privileged.

So I suggested to Mr. Schwartz that he discuss that first with me. He said he felt the whole thing was intertwined and he wouldn't want to talk until there had been some ruling of the Court on the subject.

The second thing that I said I wanted to question him about was his acting as a stockholder of the corporation, as an officer of the corporation. He had signed these papers as secretary of the corporation. He, according to Marcus, was the beneficial owner of 125 shares of stock from way back. Therefore I said that is not a privileged situation and I didn't see why he shouldn't discuss that with me. But he gave me the same answer.

Then I asked him to discuss with me the sale of this stock by Marcus to him. And I pointed out that Marcus

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testified that he had sold the stock to him after September 14. The most I could get out of him was a whistle. If your Honor will allow me to imitate it, it went something like this (whistling). I don't know whether I whistle very well, but he wouldn't discuss that again.

Incidentally, he conceded that he couldn't substantiate any legal reason that obviously a sale of stock was not a privileged situation, but he felt that the whole thing should be passed upon by the court. And, of course, he would not exhibit to me the documents.

Nevertheless, I decided that the only way to compel him to do so is, of course, to first take his deposition because that was the only way we could invoke the ruling of the

Excerpts from Hearing of January 25, 1954

court. So we took the deposition—or, rather, we attempted to take it.

I wasn't at all surprised that Mr. Schwartz should do what he did, because I had forewarning when I went to see him that this was going to happen. I hadn't any doubt it would happen.

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Mr. Brigadier: No, I don't think we need go into it at this point, except for the fact that I called upon them to tell Mr. Schwartz that they consented to his testifying and they refused to make any statement at all. In other words, I wanted them, assuming there was any privilege—I am not conceding there is any at all—but I thought that might expedite the matter, so I turned to Judge Grosman and I said, "Will you consent to his giving testimony," because, after all, if there were any privilege, it is not the lawyer's, it is the client's, anyway, and I thought that would facilitate it, and they said they wouldn't make any statement at all—they didn't say they wouldn't, he said he didn't consent regarding it all and he said he wouldn't make any statement at all—and that is why we are here this morning.

Now, before I deal with this problem of the privilege in this motion, I would like to just briefly review with your Honor this litigation, because I think it is extremely important that your Honor should see against the background of this litigation what I think is not only a fantastic conspiracy—but, of course, that is something your Honor will eventually have to resolve, as to whether it is true or not—but that this conspiracy envisages something which I think is the nature of a highjack and nothing else.

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Your Honor should first know that the State of New Jersey has made an award in condemnation proceedings of the Riviera, it is a matter of public notice, it has been

in all the newspapers, and the columns—and Mr. Winne is here, he was the attorney who handled the condemnation proceedings for the Milmar people—and that an award of $757,000 has been made by the State.

This litigation was started in December, 1950. That is more than three years ago. The litigation, as far as the record shows, is a litigation solely and entirely by way of an action of interpleader with respect to a sum of $35,000 that has been deposited in this court. No answer or counterclaim has ever been filed by any of the defendants, but particularly by the defendant Samuel Marcus.

Three years have elapsed, more than three years, and to this date we haven't yet had any statement by Mr. Marcus in this action asserting what his claim is. Lo and behold, along comes a petition on behalf of Samuel Marcus why a temporary receiver should not be appointed.

Even at that stage, when he seeks the provisional aid of this court, he doesn't even resort to the most elementary thing of filing at least an answer and a counterclaim asserting something in relation to which a receiver could be sought. That is not even done.

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It seems to me that the defendant, Mr. Marcus, just assumes—and I personally feel it is most contemptuously that he assumes—that he can just blithely proceed along in this thing and do whatever he pleases without having to take any position.

Now, of course, the question that is going to arise in your Honor's mind immediately is: Why haven't I compelled him to take a position? Because, unfortunately, I consented to what turns out to be a very silly order. Not silly because the court made it, but silly because I consented to it.

That order was entered at the beginning of the taking of the depositions several years ago and it reads that the

Excerpts from Hearing of January 25, 1954

defendants are not required to file their answers or their counterclaims until the depositions are completed. And apparently they have never been completed. This can go on for the next twenty years.

Frankly, I am rather surprised that the Administrative Director hasn't stepped in at this point and said, "What's going on in this case?" I expected any day to have a communication from the court saying that there has been something of that kind inquired about, but I assume the Administrative Director in the Federal Court does not operate on the same basis as they do apparently in the State courts.

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Mr. Grossman: Thank God they don't.

Mr. Brigadier: I was going to say the same thing in that respect, but not in this particular case.

So, as I say, here is the fantastic situation that actually all there is before the court is a complaint in interpleader of $35,000, where the $35,000 has been deposited, and where, without the filing of a counterclaim or the bringing of any original proceeding in which this defendant would seek any kind of affirmative relief, he rushes into court with a petition in our interpleader action where the only res is $35,000, and asks for a receiver appointed by the court.

Actually what I am leading up to at this point is that I am going to ask your Honor to see whether there isn't some way of bringing this thing to an end. I think your Honor would like it brought to an end. I know I would like it brought to an end.

The Court: I am surprised that your clients have been so patient during this three years.

Mr. Brigadier: Well, they haven't been, if you want to know the truth. And I feel somewhat responsible for this situation. All I am saying is—I don't want to alibi the past, I want to deal with what we have now.

Excerpts from Hearing of January 23, 1954

It seems to me that the time has come for this thing to reach an end. There is only one way it can reach an end

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and that is to fix a short date by which all the defendants in the action will be required to file whatever answers and counterclaims they want to file and that a date be fixed for the trial of this case.

If that is done—and that is why I am bringing this up now—it will render all of this unnecessary, except the one thing—the deposition, I think, of Robert Schwartz must still be taken, because I think it is such a crucial turning point of this case that it would be unfair not only to us but to the court not to be assured in advance of what this problem is with respect to Robert Schwartz that I will deal with in a moment.

But, as I say, all the rest of it, the receivership, the restraints, all of it will become purely academic.

Now, you might say, "Well, how can it become academic? There are seven hundred and fifty thousand there that have to be protected in the meanwhile."

And this is what I would like to propose to your Honor. If a short date can be fixed, the matter set down for trial, there will be no problem of the seven hundred and fifty thousand.

I spoke to Mr. Winne this morning and a suggestion was

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made between us which I think would solve this whole problem. Mr. Winne said, "Why not do it this way: Offer to have the seven hundred and fifty thousand held by Winne & Banta, in a trust account, not to be disposed of in any way except by order and direction of this court."

Now, if that is done, why any need for receiverships, or restraints, or any of this other interlocutory nonsense that we are now apparently engaged in? It will mean that this money can be put out on interest, so that my clients are

not going to be highjacked, with the threat of losing this interest, into trying to force them into doing something that they might not want to do of their own free accord. And they are in no way injured. And, therefore, that is what I would like to suggest to your Honor.

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Mr. Grosman: Now they come along while this thing is going on—the State comes along and condemns this property. It is elemental that we are entitled to have the subject

—32—

matter of the suit preserved until the final hearing. There would be no purpose to this money going over to Miller, and Bierman, and Kevelson, and we fighting about who is entitled to it. Bierman comes from Kentucky somewhere; and Miller, I understand, is out in Las Vegas somewhere; I don't know where Kevelson comes from—I think Staten Island.

Now, we made our application, your Honor, for the appointment of a receiver to take this money and hold it. All we are asking is that the subject matter be preserved.

We made our application back in October, on the 30th of October of last year. An adjournment was requested and, of course, we agreed to it.

Mr. Brigadier: You requested it. Let's be accurate.

Mr. Grosman: It may be. Maybe the first adjournment I requested. I don't remember.

But anyway—may I say this: When I requested an adjournment I communicated with Counsel. Mr.—somebody on behalf of Mr. Brigadier, and Mr. Chazin, came down here ex parte the last time and obtained an order for two weeks' adjournment from your Honor.

The Court: I understood they explained it to you.

Excerpts from Hearing of January 25, 1954

—33—

Mr. Grosman: He spoke to Mr. Tepper. As I understand it, Mr. Tepper said, "If we can get a short day—"

Mr. Brigadier: That's right. And I communicated that to your Honor.

Mr. Grosman: Please, please. I didn't interrupt you.

"—if we can get a one day adjournment because of the situation as it is developing we will agree to it."

The next thing we knew we got an adjournment from—I think for two weeks.

Now, in the meantime the Commissioners have made their report. They are prepared now to pay $757,000 for the title to this property. All we want is that this money be safeguarded until this litigation is terminated.

We have an order signed by your Honor, consented to by these people, that we are not to be called upon to file an answer or a counterclaim, because of our complete ignorance at the time of what happened, until we took our depositions.

We ask that a receiver be appointed—the order to show cause is returnable today—merely to take this money and

—34—

hold it. They agree, of course, that the money ought to be held. They want Mr. Winne, for whom I have the highest regard, to hold it. But we want a receiver appointed under the authority and responsible to this Court.

Mr. Winne, of course, is counsel to these people in the condemnation proceedings and I don't think he ought to be called upon to hold this money. I think somebody impartial, under the control of this Court, ought to be required to do it.

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Excerpts from Hearing of January 25, 1954

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Mr. Grosman:

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But I do object to these people being permitted to remain free to take this money and scatter it to the four corners of the country and leave us with a lot of empty litigation.

And so I ask your Honor that irrespective of—insofar as Schwartz is concerned, let them examine to their heart's content, properly, question by question, so that we may know precisely what we are up against. And in the meantime don't let's permit these people to take the horse out and then lock the stable door. We want the money safeguarded in some way because now they are privileged to go in there any day they see fit and accept the award and do whatever they see fit with it.

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Mr. Grosman: All we are asking for, your Honor, is that this money be safeguarded. Now, at the proper time we go into the question of who altered that contract and why it was altered—

The Court: And whether Marcus knew about it.

Mr. Grosman: Whether he knew about it, and all that kind of business.

The Court: Off the record.

(Discussion off the record.)

Mr. Grosman: At the proper time we will go into all these questions. They can bring this case to a conclusion just as fast as they like. All I ask your Honor to do is see that we don't bring the case to a conclusion over subject matter that is no longer existent.

So I ask your Honor, pending the doing of all these

Excerpts from Hearing of January 25, 1954

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things that Mr. Brigadier says that he wants me to do, or he thinks I ought to do, and all that kind of business, that you safeguard the money, put it in the hands of a receiver, put it in somebody's hands under your control, not under the control of the clients.

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Mr. Tepper: Yes, sir; and unnecessarily. --and I think we ought to cut all of that business away and get right down to the meat, the heart of this thing. And what is the heart of this thing? The heart is that there has been an award of seven hundred and fifty some odd thousand

—46—

dollars which is claimed by somebody other than Milmar Estate, somebody other than Mr. Miller, somebody other than Mr. Kevelson. And we who represent people who are claimants, and who have made a very good showing on the face of it,—

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—48—

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Mr. Tepper: In the meantime this money should be in custodia legis. I have the highest regard for Mr. Winne. But Mr. Winne is the lawyer in the condemnation matter. It should be an officer of the Court. And the only person answerable to the Court would be a receiver or a sequestrator. In this particular instance it should be a receiver subject to the direction of the Court.

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—49—

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Mr. Kesselhaut: Yes, sir. And with respect to the appointment of a receiver, we hardly see the need for it.

Excerpts from Hearing of January 25, 1954

So far as I am concerned, it is agreeable to me that these monies, if, as and when they are paid over by the Highway Commissioner—bearing in mind at the moment, I think all of us have overlooked one thing, that the monies will

—50—

not be paid over unless there is the lifting of a lis pendens that has been filed by Samuel Marcus in this matter.

The Court: Yes, I was wondering how the State would pay over, or the paying authority would pay over with the lis pendens there.

Mr. Kesselhaut: I am quite certain that with the lis pendens filed that no monies will be turned over to anyone. I don't know whether Mr. Grosman would like to say anything with respect to the lis pendens.

The Court: I was wondering how they would turn the money over with the lis pendens on file.

Mr. Grosman: Of course, the State is free to do it. That is the thing that has worried me about it. They may disregard it and say, "We don't think a lis pendens is a proper pleading to file in this case because the title to the property is not involved."

We filed as a measure of desperation. You see, they have got us tied up. We can't proceed until they get through taking the deposition of Marcus. They haven't finished yet. We can't go ahead with the case.

Mr. Brigadier: Judge Modarelli, I don't want you to be shocked. I happen to agree with Judge Grosman the first time I agreed with him today. I think he is right. As a matter of fact, I will eventually move to discharge

—51—

that lis pendens and I think your Honor will have to discharge it. I want to be fair with the Court, because if I kept silent you may say later, "Mr. Brigadier, you allowed me to be under the delusion that the lis pendens would operate." I don't think it will. I think that if I make the motion, as I plan to, your Honor will have to discharge

Excerpts from Hearing of January 25, 1954

the lis pendens. So it comes back to the other basic question.

But may I just add this, that we are not arguing that today. As I understand, that has gone off to another—

The Court: Yes, I understand.

Mr. Grosman: Well, I don't know. I want to talk to you about it. I want to think about it. It is the only hold, tenuous as it may be, that we have had upon this thing.

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—54—

Mr. Chazin: Now I want to address myself briefly to this petition for a restraint and try to cut through all of the propaganda and general talk.

The Court: Well, now, Mr. Chazin, apparently neither side objected to somebody being appointed to hold the money. It is a question of who should be appointed.

Mr. Chazin: Well, we do object to a receiver being appointed and we are not arguing that this morning. As I understand it, that wasn't being argued this morning, but the argument this morning was on a restraint against taking the funds or disbursing the funds.

And I wanted to address myself briefly to that. And in that respect I want to say this: I want to try to separate the facts from the propaganda. Now, uniformly, the arguments of Marcus begin with the propaganda statement that the plaintiffs, or Miller, did not put in any money and that he was a sucker.

But I think in this Court we deal with facts and I want to boil down the claim of Mr Marcus, see what it amounts to in fact, what he charges.

When you go through his long affidavit on this petition for the appointment of a receiver and restraint, he gets down to two charges of fraud.

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Excerpts from Hearing of January 25, 1954

—55—

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Now, I want to address myself briefly to the law on the question of restraint. I cite you the case of Kellean versus Maryland Casualty Company, 312 U. S., 377—

The Court: Are you going to file a memorandum on

—56—

that?

Mr. Chazin: I can, your Honor.

The Court: Go ahead. I'll see if I need it.

Mr. Chazin: —in which the court states:

> "This Court has frequently admonished that a Federal Court of Equity should not appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought and which Equity may appropriately grant."

Now, they have never filed a counterclaim or a direct action. And the reason for it is that they didn't know what to file because they had no proof, and they have no proof today. All they have today is these general statements, "He defrauded me."

But fraud is a specific thing. And when they get down to fraud, they get down to these two elements, "He told me business was bad" and "He told me the mortgagee was going to demand the five thousand dollar payment."

Now then, I merely want to cite one more case and I am through—and I will furnish your Honor with these citations—the case of Wilkinson versus Dobbie, in 12 Blatchf. 298, Federal Cases, in which the court said:

> "An injunction will not be granted or a receiver appointed where it is not apparent that the ultimate

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> determination of the suit in favor of the plaintiff is reasonably probable."

Excerpts from Hearing of January 25, 1954

I believe if they wanted restraint, or if they wanted a receiver, they should have put the Court in a position to do something for them by, one, filing a counterclaim; and, two, coming through with some proof.

The Court: Well, we have thirty-five thousand dollars in registry with the Court, haven't we? And that is all I am concerned with up until now. And I didn't see how I could tie up seven hundred odd thousand dollars now, on what basis I can tie it up, unless you gentlemen will file within a reasonable time an answer and a counterclaim.

Mr. Grosman: We have an order of this Court, your Honor, that we are not required to file an answer and a counterclaim until we were able to ascertain from them what happened to us and until they had completed their depositions.

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Now, we are going to file an answer and a counterclaim. We are going to ask for rescission of that contract. We are going to request this Court eventually to rule on the fact that we own practically all of the stock of this corporation. And we say so in this affidavit.

Now, if you are going to give them the money, why, there is no use litigating.

The Court: I don't want to give them anything they are not entitled to have, but I certainly want authority for what I am doing. I can't assume that everything your client claims is true.

Mr. Brigadier: If your Honor please, I think this is a piece of presumption. They say to you, "True, you can't—"

The Court: Please, Mr. Brigadier. This is off the record.

(Discussion off the record.)

Mr. Brigadier: I was going to back up the statement—that you can't say to the Court, "You are to blame if you

don't give us a receivership and a restraining order," even though the rules say you can't give it unless there is some precedent.

The Court: I won't give it unless I am authorized to give it.

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Mr. Winne: I think I ought to say this, if your Honor please, for the record. I incorporated Milmar Estate. I have represented them in their real estate dealings ever since their incorporation and represented them all through

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the hearings, first, trying to prevent the State from condemning the property, and then getting them permission to stay in business for the entire year, 1953, and on the hearing represented them before the Commissioners, and have the award, and have told the State of New Jersey that Milmar Estate would accept the award.

And I am anxious to say that for the record, because if there is anyone thinks it shouldn't be accepted they better move pretty quickly.

Now, the State has not indicated that they will pay the award as yet, but I believe they will. However, everyone treats this as if it was cash in somebody's hands. I haven't this money, Milmar Estate hasn't this money, and I don't think anyone on earth could get this money in less than thirty, or forty-five, or maybe ninety days. So it isn't as though somebody was going to take the money and start for Las Vegas tonight.

I think also, with all seriousness, having closed a few titles in my life, that the State will not pay this money over while this lis pendens is on record. While I don't think the lis pendens is a correct paper, don't think it should be on record, I think we are going to have to get it off before the

State pays out any such money. So there is really no emergency about this money being squandered overnight.

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Now, I state here to the Court, I would under no circumstances see this money disbursed, and it would have to be disbursed through me, unless I am fired, until this litigation was out of the way, because if Marcus should have this money I would be the first one to help him get it.

So I don't think there is any reason why anyone ought to express fear that the money will be dissipated. I will do whatever the Court indicates. I will take the Court's instructions, if the Court so instructs me to be responsible to see that, so far as I can, the money is not disbursed; I will accept it under any circumstances, if I can get it; but, frankly, I don't think I or anyone else could get it in less than thirty days, at the very least, and I doubt very much if in less than sixty days.

The Court: Yes, sir.

Mr. Brigadier: I consent to it, too.

Mr. Grosman: We have no objection. Of course, I don't want to make any recommendation to your Honor, that is up to you, whether you think that Counsel for one of the parties ought to be—

The Court: Well, he will only be holding the money.

Mr. Grosman: All right.

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The Court: It is not much to argue about. There won't be any big fees involved. So nobody will complain about that.

Mr. Kesselhaut: Will you, for the record, indicate that the lis pendens will be lifted or discharged?

Mr. Grosman: If the Court appoints a receiver or a Master, somebody under his control, to hold this money we will be glad to consent to the vacation of the lis pendens so that a good title may be made to the State.

Excerpts from Hearing of January 25, 1954

The Court: All right. Then you will prepare an appropriate order, submit it to your adversary, so that the money will be controlled through the Court and everybody will be happy.

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Order Appointing Master to Take Into His Possession Funds, Etc.

(Filed—February 18, 1954)

This matter being opened to the courts by Messrs. Robert D. Grosman and Jules E. Tepper, attorneys for and of counsel with the defendant, Samuel Marcus on notice to and in the presence of Maurice C. Brigadier, Esq. attorney for the defendant, Milmar Estates, Inc., Abraham Chasin, of the firm of Chasin & Chasin, attorneys for the plaintiff, Al Bierman and William Miller, and George Kesselhaut, Esq., attorney for Al Kevelson, on the return of an order to show cause made herein why a receiver should not be appointed to take into his possession the proceeds of a condemnation award made by the commissioners in condemnation in the suit of the State Highway Commissioner of the State of New Jersey for the condemnation of lands of Milmar Estates, Inc., which award approximates $757,410; and why the plaintiffs and the defendant, Milmar Estates, Inc., a New Jersey corporation should not be restrained from taking into their possession jointly or severally, the aforementioned proceeds of said condemnation proceeds, or any part thereof; and the court having heard the argument of counsel for the respective parties and having duly considered the matter:

It is thereupon on this 18th day of February, 1954. Ordered and adjudged as follows:

Order Appointing Master to Take Into His Possession Funds, Etc.

1. The state Highway Commissioner of the State of New Jersey shall pay over the proceeds of the condemnation award made in favor of Milmar Estates, Inc., by the commissioners in condemnation in the matter of the Petition of the State Highway Commissioners of the lands of Milmar Estates, Inc., a corporation of New Jersey before Honorable J. Wallace Leyden, Superior Court Judge, Bergen County, New Jersey, which premises are situated in Fort Lee, Bergen County, New Jersey, owned by Milmar Estates, Inc., and which premises are commonly known as "Bill Miller's Riviera" to Peoples Trust Company of Bergen County, 210 Main Street, Hackensack, New Jersey, which said bank shall receive said money and place the same upon deposit in an account designated "Walter G. Winne, Master of the United States District Court," District of New Jersey; and which said money shall not be disbursed by said banking institution or subject to withdrawal by any person except upon the express order of the United States District Court, District of New Jersey; no bond shall be required of the bank, Peoples Trust Company and Walter G. Winne, Master.

2. Peoples Trust Company of Bergen County shall pay out of the proceeds of the aforesaid award the sum of $77,500.00 together with interest computed from February 1, 1954 at the rate of 5 per centum per annum to the holder of record of the first mortgage on lands and premises of Milmar Estates, Inc., situated in Fort Lee, New Jersey heretofore condemned by the Highway Commission of the State of New Jersey.

3. Upon the entry of this order, the defendant, Samuel Marcus, or his attorney shall sign the necessary documents to vacate lis pendens filed by him in the County of Bergen, affecting the lands and premises of Milmar

Order Appointing Master to Take Into His Possession Funds, Etc.

Estates, Inc., which are the subject of the aforementioned condemnation proceedings.

Dated: February 18th, 1954.

ALFRED E. MODARELLI
U. S. D. J.

Notice of Motion

(Filed—August 5, 1954)

To: ROBERT D. GROSMAN, Esq.
Attorney for Defendant, Samuel Marcus
24 Commerce Street
Newark, N. J.

JULES E. TEPPER, Esq.
Of Counsel with Attorney for Defendant,
Samuel Marcus
1060 Broad Street
Newark, N. J.

CHAZIN & CHAZIN, Esqs.
Attorneys for Plaintiffs
30 Journal Square
Jersey City 6, N. J.

SIRS:

PLEASE TAKE NOTICE that the undersigned, Maurice C. Brigadier, attorney for defendant, Milmar Estates, Inc., will apply before the United States District Court for the District of New Jersey, at the Federal Building, in the City of Newark, N. J., on the 11th day of August, 1954, at ten

o'clock in the forenoon, or as soon thereafter as counsel can be heard, before the Honorable Alfred E. Modarelli, for an order granting the following relief to the movant:

1. That, pursuant to the concluding paragraph of an opinion of the Honorable Alfred E. Modarelli filed in the above captioned matter on the 23rd day of June, 1954, a time be established for the completion of the taking of all the depositions and other pretrial discovery proceedings, so that a trial date can be made certain for the trial of the above captioned matter.

2. That a time be established for the completion of the service and filing of all pleadings by all of the parties in the above captioned matter, so that a trial date can be made certain for the trial of the above captioned matter.

The ground of the applications for relief in paragraphs numbered 1 and 2 above is that the above captioned interpleader action was commenced by the filing of a complaint on December 28, 1950, and the policy and Rules of Court warrant that discovery proceedings be terminated at the earliest practicable time, and that in an orderly manner and within a reasonable period of time the parties should serve and file their pleadings, so as to join issue on the matters to be determined by trial.

3. That a date be fixed for the trial of the above captioned action.

4. That Walter G. Winne, Master of the United States District Court for the District of New Jersey, be permitted, authorized, directed and instructed to invest all of certain moneys received by him in the above captioned matter and placed upon deposit in an account designated "Walter G. Winne, Master of the United States District Court", with People's Trust Company, in legal investments authorized

under the laws of the State of New Jersey, and that for this purpose he be permitted to withdraw the said sum deposited as aforementioned and that the said bank permit the said disbursement.

5. That Walter G. Winne, Master of the United States District Court for the District of New Jersey, be permitted, authorized, directed, and instructed to pay from the moneys received and deposited as aforementioned certain obligations of Milmar Estates, Inc., in the amounts and to the creditors hereinafter named, and to take receipts for such payments and undertake all steps necessary to effectively cancel the obligations hereinafter enumerated:

(a) to repay to the Public National Bank and Trust Company, Pitkin and Watkins Avenues, Brooklyn, N. Y., the sum of $65,000.00 in satisfaction of two notes now due and owing to the said bank, each discounted on the 21st day of July, 1954, and due on the 21st day of August, 1954, being one note payable in the amount of $40,000.00, and another payable in the amount of $25,000.00, as shown in Schedule A annexed hereto.

(b) To pay to the United States Government, Director of the Bureau of Internal Revenue, the sum of $42,583.41 plus accrued interest at 6% per annum, from May 7, 1954, in payment of Federal income and excess profits taxes payable from Milmar Estates, Inc., the said matter being established as a result of an examination by the Bureau of Internal Revenue for the fiscal years ending March 31, 1950, March 31, 1951, and March 31, 1952, and being the income and excess profits taxes due for the said fiscal years, as shown in Schedule B annexed hereto; and

To pay to the creditors of Bill Miller's Riviera, Inc., all debts of Bill Miller's Riviera, Inc., amounting to $86,496.59, and in particular including the income and excess

profits taxes of Bill Miller's Riviera, Inc., and the Federal unemployment tax due and owing by Bill Miller's Riviera, Inc., to which payments William Miller, Al Kevelson, and Al Bierman consent.

6. And that such other relief be granted as under the circumstances is incidental, fitting, and proper in order to accomplish the hereinabove enumerated objectives.

/s/ Maurice C. Brigadier
Maurice C. Brigadier
Attorney for Defendant,
Milmar Estates, Inc.

Schedule A

Notes Payable—Milmar Estates, Inc.

Creditor: Public National Bank and Trust Company
Pitkin and Watkins Avenues, Brooklyn, N. Y.

Date Discounted	Amount Received	Date Due
July 21, 1954	$40,000.00	August 21, 1954
July 21, 1954	25,000.00	August 21, 1954
		65,000

Schedule B

TAXES PAYABLE SCHEDULE
MILMAR ESTATES, INC.

Income and Excess Profits Taxes

Due for Fiscal Year ended March 31, 1950	$ 4,610.22
Due for Fiscal Year ended March 31, 1951	27,953.54
Due for Fiscal Year ended March 31, 1952	10,019.65
Total	$42,583.41

plus accrued interest at 6% per annum from May 7, 1954

Affidavit of J. B. Hoffman

(Filed—August 12, 1954)

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

J. B. HOFFMAN, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a member of a firm of certified public accountants known as Hoffman and Granick, maintaining offices in the City, County and State of New York.

2. I am executing this affidavit in support of a certain Notice of Motion made by Milmar Estates, Inc. in the above captioned matter, returnable before the United States District Court on August 11, 1954, wherein, in part, an order is sought authorizing the payment of certain obligations of Milmar Estates, Inc. to creditors thereof and payment to creditors of Bill Miller's Riviera, Inc.

Affidavit of J. B. Hoffman

3. I have examined the account books and other fiscal books, bills, checks and other fiscal documents of Milmar Estates, Inc. and Bill Miller's Riviera, Inc., and the annexed schedules constitute a summary of the said books and records revealing the obligations of the said corporations on the dates referred to on the said schedules.

4. Exhibit "A" is a schedule of notes payable September 2, 1948 to June 21, 1954 which schedule was prepared on July 15, 1954. This schedule indicates that as of July 15, 1954 there was due and owing by Milmar Estates, Inc. the amount of $65,000.00 consisting of two notes, one in the amount of $40,000.00 and the second note in the amount of $25,000.00, each of which notes was due June 21, 1954. This schedule reveals the fact that it has been the continuous practice of Milmar Estates, Inc. during the past six years to borrow funds from the Public National Bank and Trust Company, Pitkin and Watkins Avenues, Brooklyn, New York, for the purpose of paying current operating obligations.

5. The $65,000.00 obligation aforementioned was satisfied when due and pursuant to the practice of Milmar Estates, Inc. as hereinabove referred to, Milmar Estates, Inc. did on July 21, 1954 discount with Public National Bank and Trust Company, Pitkin and Watkins Avenues, Brooklyn, New York, two notes in the total amount of $65,000.00 consisting of one note in the amount of $40,000.00 and a second note in the amount of $25,000.00, and Milmar Estates, Inc. received these funds and the said notes discounted as aforementioned are due and payable on the 21st day of August, 1954.

6. Schedule "A" annexed to this affidavit constitutes the factual and fiscal background from which to view the Schedule A annexed to the aforementioned Notice of Motion, which Schedule A sets forth the notes payable of

Milmar Estates, Inc. and indicates the true fact that on July 21, 1954 two notes were discounted in the amounts above referred to, each due on the date above referred to.

7. Annexed hereto as Schedule "B" is a schedule of federal income and excess profits taxes of Milmar Estates, Inc. totalling $42,583.41 plus accrued interest at 6% per annum from May 7, 1954 as the same was revealed by an examination of the books of Milmar Estates, Inc. as of July 15, 1954 when I made the examination of the books as aforementioned. These taxes payable are the result of an examination of the Bureau of Internal Revenue for the fiscal years ending March 31, 1950, 1951 and 1952.

8. Annexed hereto as Schedule "C" is a schedule of federal income and excess profits taxes of Bill Miller's Riviera, Inc. showing a balance outstanding of $8,046.44, said tax balance being the result of an examination by the Bureau of Internal Revenue for the fiscal years ended March 31, 1950, 1951 and 1952. The above amount of $8,046.44 is the net balance due after giving effect to an over-assessment tax for the fiscal year ended March 31, 1952 as revealed in the said schedule. This $8,046.44 bears additional interest at 6% per annum from May 7, 1954. The figures set forth in the said schedule are the result of an examination which I made of the fiscal books and papers of Bill Miller's Riviera, Inc. as of July 15, 1954.

9. Annexed hereto as Schedule "D" is a schedule of federal unemployment taxes. There is one item in the amount of $8,911.23 as shown on the books of Bill Miller's Riviera, Inc. as of July 15, 1954. This obligation for federal unemployment taxes constitutes a tax lien and claim with respect to which service has been made upon Walter G. Winne, Esq., as Master in Chancery. This item is shown under Form No. 940 for the calendar years 1946, 1947 and 1948. In addition thereto, there is a balance in

the amount of $765.13 (plus accrued interest) due for the unpaid federal unemployment insurance tax for the calendar year 1953 and $197.14 for the first quarter of 1954 social security and withholding taxes. The total of these federal tax obligations, exclusive of accrued interest as of July 15, 1954, is $9,873.50.

10. Annexed hereto as Schedule "E" is a schedule of 67 creditors of Bill Miller's Riviera, Inc. showing a list of accounts payable of Bill Miller's Riviera, Inc. as of July 1, 1954, resulting from an examination of the books of the said corporation as of July 15, 1954. This accounts payable schedule of Bill Miller's Riviera, Inc. as of July 1, 1954 indicates a total indebtedness of $68,576.65.

11. The obligations aforementioned as shown by the books of Milmar Estates, Inc. and Bill Miller's Riviera, Inc. as of July 15, 1954 remaining outstanding and unpaid and the only change in the schedules prepared on July 15, 1954 is the fact that the notes payable schedule of Milmar Estates, Inc., which reveals as of July 15, 1954 under numbers 46 and 47, that two notes are due and outstanding, must be supplemented, as indicated above, by the fact that those two notes have been paid and in their place two substitute notes have been executed and discounted on July 21, 1954 in the total amount of $65,000.00 and are due on August 21, 1954.

/s/ J. B. Hoffman
J. B. Hoffman

Subscribed and Sworn to
before me this 10th day
of August, 1954.

/s/ Edith B. Walters-Statezny
Edith B. Walters
Notary Public of New Jersey
My Commission Expires Aug. 18, 1957.

Exhibit "A"

Photostat

(See Opposite) ☞

EXHIBIT "A"

MILMAR ESTATE, INC.

Notes Payable Schedule - September 27, 1948 - June 21, 1954

No.	Date Discounted	Interest Paid	Amount Received	Date Repaid	
1	Sept. 27, 1948	$151.67	$20,000.00	12/24/1948	
2	Dec. 24, 1948	150.00	20,000.00	3/24/1949	
3	Mar. 24, 1949	153.33	20,000.00	6/24/1949	
4	June 24, 1949	156.67	20,000.00	9/26/1949	
5	Aug. 3, 1949	64.17	10,000.00	10/11/1949	
6	Sept. 8, 1949	87.33	8,000.00	12/2/1949	
7	Sept. 27, 1949	203.33	20,000.00	10/26/1949	
8	Dec. 1, 1949	103.50	5,000.00	4/3/1950	
9	Dec. 2, 1949	62.92	2,500.00	5/1/1950	
10	Jan. 3, 1950	49.17	2,500.00	5/1/1950	
11	Jan. 26, 1950	158.33	20,000.00	5/1/1950	
12	Feb. 1, 1950	37.08	2,500.00	5/1/1950	
13	Mar. 1, 1950	25.42	2,500.00	5/1/1950	
14	Apr. 3, 1950	11.67	2,500.00	5/1/1950	
15	April 4, 1950	23.33	5,000.00	5/1/1950	
16	May 1, 1950	295.20	37,500.00	9/19/1950	
17	Aug. 1, 1950	41.56	7,500.00	10/17/1950	
18	Dec. 11, 1950	587.50	25,000.00	5/1/1951	
19	Sept. 28, 1951	480.00	30,000.00	1/31/1952	
20	Jan. 2, 1952	404.17	25,000.00	5/1/1952	
21	Jan. 31, 1952	76.67	5,000.00	5/1/1952	
22	May 8, 1952	238.00	24,000.00	8/21/1952	
23	Nov. 20, 1952	590.00	30,000.00	1/11/1953	
24	Nov. 20, 1952	108.33	10,000.00	1/12/1953	
25	May 5, 1953	613.33	40,000.00	8/4/53	
26	Aug. 4, 1953	480.00	40,000.00	10/15/1953	
27	Nov. 2, 1953	103.33	20,000.00	12/2/1953	
28	Nov. 19, 1953	90.63	25,000.00	12/23/1953	
29	Dec. 31, 1953	7.50	2,500.00	1/31/1954	
30	Dec. 2, 1953	60.00	20,000.00	1/2/1954	
31	Dec. 23, 1953	96.88	25,000.00	1/23/1954	
32	Dec. 23, 1953	103.33	20,000.00	1/23/1954	
33	Jan. 7, 1954	5.00	2,500.00	2/4/1954	
34	Jan. 8, 1954	11.67	10,000.00	2/7/54	
35	Jan. 20, 1954	96.88	25,000.00	2/18/1954	
36	Jan. 20, 1954	180.83	35,000.00	2/18/1954	
37	Feb. 18, 1954	87.50	25,000.00	3/18/1954	
38	Feb. 18, 1954	163.33	35,000.00	3/18/1954	
39	Mar. 19, 1954	186.67	35,000.00	4/19/1954	
40	Mar. 19, 1954	100.00	25,000.00	4/19/1954	
41	Apr. 21, 1954	175.00	35,000.00	5/21/1954	
42	Apr. 21, 1954	93.75	25,000.00	5/21/1954	
43	May 19, 1954	192.50	35,000.00	6/21/1954	
44	May 19, 1954	103.13	25,000.00	6/21/1954	
45	June 7, 1954	10.83	5,000.00	6/21/1954	
46	June 21, 1954	193.33	40,000.00 •	7/21/1954	Due
47	June 21, 1954	90.63	25,000.00 •	7/21/1954	Due

Exhibit "B"

MILMAR ESTATE, INC.

Taxes Payable Schedule
Income and Excess Profits Taxes

Due for fiscal year ended March 31, 1950	$ 4,610.22
Due for fiscal year ended March 31, 1951	27,593.54
Due for fiscal year ended March 31, 1952	10,019.65
Total	$42,583.41

Exhibit "C"

BILL MILLER'S RIEVIERA, INC.

Income and Excess Profits Taxes

Due for the fiscal year ended March 31, 1950	$ 673.05
Due for the fiscal year ended March 31, 1951	11,133.20
Total	11,806.25
Less: overassessment for the fiscal year ended 3/31/1952	3,759.81
BALANCE DUE	$ 8,046.44

Exhibit "D"

Federal Unemployment Tax Obligations of Bill Miller's Riviera, Inc.

Under Form No. 340 for the calendar years 1946, 1947 and 1948	$8,911.23
Under Form No. 940 for the calendar year 1953—balance	765.13
Under Form No. 941 for the first quarter of the year 1954	197.14
Total	$9,873.50

Exhibit "E"

BILL MILLER'S RIVIERA, INC.

Accounts Payable Schedule as of July 1, 1954

1—Am. Society of Composers & Authors, 744 Broad St., Newark, N. J.	$ 635.00
2—H. Baker Milk Co., Inc., 2-4 East Monroe St., Passaic, N. J.	1,507.44
3—Beacon Distributing Co., 707 Tenth Ave., N. Y. C. 19, N. Y.	1,035.61
4—A. Beck & Son, 880 River Road, Edgewater, N. J.	191.11
5—Mme. Bertha, 110 West 47th Street, N. Y. 36, N. Y.	70.88
6—Blue Sea Fish Co., Inc., 422 Cedar Lane, Teaneck, N. J.	3,983.08

Exhibit "E"

7—Broadcast Music, Inc., 580 Fifth Ave., N. Y. 36, N. Y.	425.00
8—Brenon & Morgan Associates, 270 Park Ave., N. Y. 17, N. Y.	22.00
9—Blackstone Advertising Inc., 221 West 57th St., N. Y. 19	791.77
10—Canada Dry Ginger Ale, Inc., 635 West 54th St., N. Y. 19	1,087.68
11—Congregation Talmud Torah Ohev Sholom, 1379 E. 96 St., B'klyn, N. Y.	3,000.00
12—Carroll Musical Inst. Service, 209 W. 48th St., N. Y. 36	58.00
13—B. R. Doerfler Co., 530 West 58 St., N. Y. 19, N. Y.	1,815.99
14—Electric Products Inc., 57 W. Allendale Ave., Allendale, N. J.	124.85
15—Albert Ehlers, Inc., 1300 Flushing Ave., B'klyn 37, N. Y.	536.92
16—Esso Standard Oil Co., c/o A. B. Hartman, 317 W. 90 St., N. Y. 24	62.78
17—First National Pickle Products, 507 Kent Ave., B'klyn 11, N. Y.	88.80
18—Flagstaff Foods, Perth Amboy, New Jersey	1,171.71
19—Frankel Lumber & Supply Co., 6415—14th Ave., B'klyn, N. Y.	5,118.00
20—Eddie Guttenplan, Inc., 391 Washington St., N. Y. 13	2,743.63
21—General Meat Corporation, 826 Washington St., N. Y. 14	739.31

Exhibit "E"

22—Gnome Bakers Inc., 320 E. 65th St., N. Y. 21, N. Y.	1,215.62
23—N. C. Greenfield, Inc., 570 Seventh Ave., N. Y. 18	150.22
24—Globe Neon Sign Co., 1360 Garrison Ave., N. Y. 59	655.95
25—Chas. Glanzrock & Co., 79 Fifth Ave., N. Y.	552.50
26—Nathaniel S. Goldring, Esq., 24 Commerce St., Newark, N. J.	150.00
27—Graff, Washbourne & Dunn, 158 W. Forest Ave., Englewood, N. J.	935.00
28—Half Moon Meat Co., 405 West 14th St., N. Y. 14, N. Y.	10,000.00
29—Hoebel Florist, Route #1 #6, Fort Lee, N. J.	10.00
30—Home Fuel Co., 255 Jackson Street, Englewood, N. J.	790.00
31—Hofmann & Katz, Esq's., 1475 Broadway, New York City, N. Y.	40.00
32—Peter Henderson Stumpf & Walter Co., 48 Cortlandt St., N. Y. 7	37.80
33—Hoffman & Granick, C. P. A's., 527 Lexington Ave., N. Y. C.	3,900.00
34—International Business Machine Co., 240 Broadway, Paterson, N. J.	63.55
35—Larry's Sea Food, 126 Brunswick St., Jersey City, 2, N. J.	1,647.61
36—Manhattan Egg Co., Inc., 349 Greenwich St., N. Y. 13, N. Y.	167.92

Exhibit "E"

37—Merolla's Market Inc., 759 Second Ave., N. Y. 17, N. Y.	266.75
38—Master Electric Motor Repair, 240 Route 17, Paramus, N. J.	34.00
39—Monroe Plumbing & Heating Supply Corp., 1066 Bedford Ave., B'klyn 5, N. Y.	3,825.00
40—Mc Kay Bros., 278 Secaucus Road, Secaucus, N. J.	198.00
41—New Jersey Telephone Co., 604 Anderson Ave., Cliffside, N. J.	475.00
42—National Tinsmith Supply Co., 604 Broadway, Brooklyn, N. Y.	5,388.60
43—National Cleanser Products Co., Inc., 437 11th Ave., N. Y.	187.88
44—Noxall & U. S. Linen Co., 113 No. 1st Street, Paterson, N. J.	2,454.79
Noxall & U. S. Linen Co. (in dispute) ($4,030.00)	
45—Joseph Nesta Construction Co., 100 Riverside Ave., Newark, N. J.	262.65
46—Parisi Contractors Corp., 20 N. Van Brunt St., Englewood, N. J.	5.15
47—Pepsi-Cola, North St., Teterboro, N. J.	12.00
48—Pesin Bros., 351 Pallisade Avenue, Jersey City 7, N. J.	780.01
49—Public Building Material Co., Inc., 5 Commercial Ave., Garden City, N. Y.	4,383.40
50—Philadelphia Dairy Products, 25 Delford Ave., Bergenfield, N. J.	416.34

Exhibit "E"

51—Pitney-Bowes, Inc., Stamford, Conn.	14.85
52—Quaker Soap Co., 330-354 Secaucus Road, Secaucus, N. J.	96.37
53—Robin Sales Company, 1133 Broadway, N. Y. 1, N. Y.	680.56
54—Abraham Sobil, Esq., 349 East 149th Street, Bronx, N. Y.	50.00
55—Sameth Exterming Co., Inc., 157 Chambers St., N. Y. 7, N. Y.	100.00
56—John T. Stanley Co., 308-354 Secaucus Road, Secaucus, N. J.	96.30
57—Standard Sales Book Co., Inc., 409 Duke, Norfolk 10, Va.	31.00
58—Standard China Co., Inc., 220 Bowery, N. Y. 12, N. Y.	173.10
59—Steiner, Towers Co., 221 West 57th St., N. Y. 19, N. Y.	36.90
60—Seddons Gas Station, Englewood, New Jersey	25.00
61—Tanenbaum Harber Co., Inc., 221 West 57th Street, N. Y.	2,600.00
62—United Stationers Inc., 51 E. Palisades Ave., Englewood, N. J.	3.36
63—Windsor Cleaning & Dyeing Co., Inc., 9 Columbus Terrace, Edgewater, N. J.	84.00
64—S. Wolf Sons, 771 Ninth Avenue, New York 19, N. Y.	78.28
65—Western Union, 832 Broad Street, Newark, N. J.	11.50

Exhibit "E"

66—Zaccar Offset Co., 45 Rose Street, New York 38, N. Y.	30.00
67—Benjamin Zucker, Esq., 401 Broadway, New York City, N. Y.	250.00
TOTAL	$68,576.65

SUMMARY

Page One	$27,933.85
Page Two	37,123.23
Page Three	3,519.57
TOTAL	$68,576.65

Excerpts from Hearing August 11 to 12, 1954

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Mr. Brigadier: May I make this additional request. Mr. Walter Winne, under very strong pressure from me, has remained here all day, and his statement that he would make to the Court is very brief, and I wonder whether with the remaining time you would listen to him. It is out of context, but we will fit it in later. And then he won't have to return tomorrow. I will appreciate it, and I know Mr. Winne would very much, if your Honor can see your way.

The Court: I see no reason why we shouldn't listen to Mr. Winne's brief statement, because he really isn't necessary to this.

Mr. Winne: If your Honor please, I am not a party to the central proceedings, except your Honor knows the fund was deposited in my custody in the People's Trust Company in Bergen County, New Jersey, and I have said to all counsel that since that has happened every creditor of

these parties seems to think that I should pay the bill. And I am sympathetic, naturally, to creditors and I would like to see them paid, and I have been compelled to tell them that while there is money I can't say who is going to

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receive it until the Court has so ordered. And I am under almost daily pressure by somebody, by mail or telephone, about these various claims.

Now, they include two very substantial claims by the Federal Government, which liens have been filed with me, and the rest, generally speaking, are merchandise creditors, like the man that sold fish, and a man that sold meat, a man that sold ginger ale, and the rest of the merchandise creditors. And they are all people who are worthy of consideration. But that is not my particular interest. I told the gentlemen that I hope they would relieve me some time of being the recipient of all these requests, because I have no client, nobody is going to pay me for my time.

And to that extent it would be an advantage to me if I could get some of these small—comparatively small merchandise creditors, and others, paid. And that is what I told the gentlemen outside and I told them that was the only purpose I had in being here this morning, that I was hoping to get some relief in that matter.

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Mr. Tepper: We can agree that lienors of the property of Milmar Estates, Inc., who can prove their claims, should be paid. We can agree upon that without any difficulty. In other words, if there is a mortgage on the property, that can be disposed of. If taxes are due to the municipality, that may be disposed of. If there is a Government claim against Milmar Estates, Inc., which has been proved, that may be disposed of.

But what they would like to have done, and we might just as well discuss it here now—Mr. Winne just stated that

he is being bothered by creditors. Creditors of what corporation? Not of Milmar Estates, Inc., but of some other entity, the Riviera operating company, which I believe is a separate and distinct corporation, is unrelated to Milmar Estates, Inc., and by no stretch of the imagination would your Honor issue an order permitting this Master to pay any creditors of that corporation. It hasn't anything to do with this present suit.

Now, that's the thing in a nutshell. So I told Mr. Brigadier, "We will have no difficulty with this. Let us

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agree now. We will fix a date to continue to take these depositions. We will complete our depositions. If you want to pay creditors whose claims have been ascertained, approved, and are against Milmar Estates, Inc., we will have no difficulty about that."

Then why are we here before the Court? It's my judgment that they would like to have your Honor rule once and for all, in order to satisfy counsel for creditors of the Riviera operating company, and the creditors themselves, that Mr. Winne can not pay out of this fund such claims. That is the whole thing in a nutshell.

The Court: Wasn't this check made to Milmar Estates, Inc., as the owner of the property?

Mr. Grosman: Yes, your Honor.

Mr. Tepper: That's right.

Mr. Grosman: May I say that I agree with everything that Mr. Tepper says.

The Court: Well, now you know where to start tomorrow morning, Mr. Brigadier.

Now, Mr. Davis, whom do you represent?

Mr. Davis: If your Honor please, I don't know whether the Court knows it, but there is presently pending in the

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State court, in the chancery division, application for a

receiver, in which there are two defendants, Milmar Estates and Bill Miller's Riviera.

The Court: Is that the corporate title of the Riviera, Bill Miller's Riviera?

Mr. Davis: Bill Miller's Riviera, Inc.

Mr. Grosman: A separate entity.

Mr. Davis: Well, that's one corporation. Then there is Milmar Estates, Inc. This money was on deposit with the Court of Chancery—that is, the Chancery Division of the Superior Court—and all counsel—I won't say all counsel, but Mr. Winne, Mr. Chazin, myself, Judge Grosman and Mr. Tepper were all before Judge Grimshaw. Now, that matter has not been dismissed, either by consent or by formal order. It is presently pending. There is no doubt in my mind that if there is strenuous opposition by these gentlemen in behalf of—whoever they represent to the payment of the general creditors that there is going to be a receiver appointed, because Bill Miller's Riviera has a substantial interest in this money, because of their leasehold interest on the property itself.

I say to the Court, and I know that Mr. Winne would say it, too, if he were here, that these general creditors are—

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Mr. Kesselhaut: He is here.

Mr. Davis: I am sorry. I thought that he had gone home. I will make the statement in his presence then, that he will say that the general creditors should be paid and paid immediately, because they are the sufferers.

And I don't know the exact legal status of Mr. Bierman, and the other gentlemen that counsel represent, but I say that this petition should be granted.

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Mr. Grosman: Now, that's our position. We object to this money being dissipated.

Excerpts from Hearing August 11 to 12, 1954

May I say one more thing? Now, Counsel, my friend here—

The Court: Mr. Davis.

Mr. Grosman: —out in Hackensack before Judge Grimshaw was making an application for the appointment of a receiver for Milmar and for Bill Miller's Riviera, because some claim that he had against Bill Miller's Riviera or—I think it was Bill Miller's Riviera, and Mr. Kevelson guaranteed his debt.

Now, what they are doing in here now, I don't know.

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But these debts, of this poor little fish man, and the others, that are due from Bill Miller's Riviera, with which we are not concerned in this suit at all, as I understand it, if not all, at least my friend's claim was guaranteed by Kevelson. And the matter was adjourned without date in Hackensack.

The Court: Let's see. Milmar was the owner of the fee at the time.

Mr. Grosman: Yes.

The Court: Bill Miller's Riviera, I take it, was the lessee, is that right?

Mr. Grosman: A separate corporation.

The Court: And when the award was made in the State court, it was not apportioned as between lessee and owner, but the value of the leasehold was taken into consideration. And I suppose, under the rules that prevail in condemnation cases, that whatever it was worth more than the rental value, that was taken into consideration. But one check was made to Milmar Estates, Inc.

Mr. Brigadier: May I just say, your Honor, that the State expert, Mr. Winne informs me, testified that the leasehold was worth more than the rental of the property, and that was taken into consideration by him in giving his

estimate of the value. That I have from Mr. Winne and

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I so state to you.

The Court: Well, it would have to be worth more, otherwise they wouldn't have gotten anything for the unused portion of the lease. I learned that the hard way thirty years ago.

Mr. Grosman: We don't know just what portion there—

The Court: No, I don't know, either.

Mr. Grosman: They said they were losing money. Bill Miller's Riviera claimed they were losing money all along.

Mr. Tepper: How could it be worth anything?

Mr. Chazin: If your Honor please,—

The Court: Now, wait. I only can do things legally. Not that I must do things expeditiously, or anything like that, it's a question of doing things legally.

How could I pay any debts of Bill Miller's Riviera out of the funds of Milmar Estates?

Mr. Chazin: Mr. Brigadier, do you want to answer that?

The Court: How can I, legally?

Mr. Brigadier: I am not asking you to pay it—to order any check drawn to Bill Miller. I am asking you to draw a

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check to Milmar Estates—

The Court: I know.

Mr. Brigadier: —on the basis of—let me point out what the basis is—that at best, the best claim that could be asserted is ownership of one half of the stock, that we already have in court a hundred—that is, we have thirty-five, and ninety is admitted he received, is a hundred and twenty-five. So that I say, let it come out of Kevelson's share, let the order so read, if you want to, as a protective order. But there is still three hundred and fifty thousand, half, that would be clear, and the amount that we are asking for is less than that half. It is a total of a hundred and ninety-four thousand.

Excerpts from Hearing August 11 to 12, 1954

The Court: I know, but, Mr. Brigadier, if I heard Judge Grosman right, he says that Mr. Marcus will ultimately claim all of the stock, except ten thousand dollars' worth—by Mr. Bierman, is it, the other—

Mr. Grosman: That's right.

Mr. Brigadier: May I ask your Honor just to do this—it's very brief, it's Exhibit P-80 in the deposition, a receipt signed by Marcus, Schwartz had nothing to do with the drawing of it, wasn't present, it's admitted by all parties

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that he wasn't—I ask you merely to look at that and then see whether or not I shouldn't say to your Honor, as I will have to. "Let's read these depositions and let's discharge this whole Master at this point."

The Court: "August 27, 1948. Received from Al Bierman check for ten thousand dollars as deposit pending negotiations for the purchase of my stock of Milmar Estates, Inc., which includes all outstanding stock, excepting that stock owned by William Miller and Al Bierman. In the event that a written contract is not entered into within ten days from the date of this letter satisfactory to my attorney, I will return this deposit without obligation to either party. Received two checks of five thousand dollars each."

I take it that is Mr. Marcus' signature.

Mr. Brigadier: Now, one other thing, your Honor. Whatever Mr. Grosman may have said about the deposition, the deposition will speak for itself, as to what Mr. Schwartz testified to.

The Court: I know, but am I in a position at this stage of the proceedings to start making findings of fact? That's practically what you want me to do.

Mr. Brigadier: Except this, sir. I can make an applica-

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tion, if that is what you prefer I do. I was trying to hope

to save you to read all this record. You have made an order—that has been consented to—that the money be deposited. But that was done on the basis, as you know, of an application that was made for a receiver.

Let's assume the worst and you had appointed a receiver. If it can be brought to your Honor's attention by the depositions that are taken subsequent to your appointment of a receiver that no receiver should be appointed, you would vacate the receiver, would you not?

The Court: I suppose I would.

Mr. Brigadier: So that's the only alternative I am left with. I will then have to serve a motion based upon the depositions in this case, which will satisfy you, I think, beyond a reasonable doubt,—

The Court: Only by a preponderance—

Mr. Brigadier: —that this fund should not—I'm sorry.

The Court: By a preponderance of the evidence.

Mr. Brigadier: But I'll go further.

The Court: You will?

Mr. Brigadier: Yes. I will tell you something else I will

do, sir. I will rest it on Schwartz's deposition, including their cross.

And the last thing, after all of this is done—just let me read you the final sum-up, tie-up question that was asked of Mr. Schwartz—"Is there any doubt in your mind about the fact that Marcus intended to sell all right, title and interest that he had in any stock certificate, any shares, any interest in Milmar that he had on September 14, 1948, by reason of the execution of these agreements?" Answer: "No, I don't have any doubt at all about it."

The Court: Well, that's what his lawyer said. But we have got to hear a lot of other witnesses.

Mr. Brigadier: This is his lawyer, who corroborates the five other affidavits that have been filed with you on this

receivership application, and Marcus stands on his own uncorroborated word.

The Court: So far it's uncorroborated. I don't know by the time we get through what corroboration—

Mr. Brigadier: Sir, the only other alternative then is, is it not, that I should serve the motion? That's what you are saying to me, that you have no basis for this present application. There is this basis.

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The Court: What is the basis?

Mr. Brigadier: The basis of the evidence that has now been taken by way of deposition, plus the affidavits that are file, which were the basis of the original application for vacating that whole mastership, sir. There is no basis for it now.

Mr. Chazin: May I be heard on that point, your Honor?

The Court: You may be heard in a few minutes. We will take a five minute recess.

(Short recess.)

The Court: Yes, Mr. Chazin wanted to be heard.

Mr. Chazin: If your Honor please, I think that I have to say a few things to attempt to clarify the confusion in the facts, which I believe Judge Grosman has created this morning.

Whenever these arguments take place there are a lot of general statements made, but when Mr. Marcus finds that he has got to reduce his claim, or position, to paper, the position gets down to nothing or practically nothing.

Now, that was a general statement and I will tell your Honor what I mean by that. First, the statement was made by Judge Grosman that Mr. Marcus walked out of

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that deal with five hundred shares still in his pocket. But what he didn't say was that Mr. Schwartz testified, and the

various affidavits filed before your Honor state, that there was some discussion that all the stock wasn't available, so they decided to use the method of canceling all the stock, and the record shows—the testimony of Mr. Schwartz, and his writing in the stock book, show that all the stock was canceled in the stubs and twelve hundred and fifty new shares were issued signed by Mr. Marcus, that was the total capitalization beforehand, made out to Mr. Marcus and endorsed in blank by him and delivered to Judge Lieberman.

Mr. Marcus admits his signature on those. They have been presented before your Honor, those twelve hundred and fifty shares of stock, the entire capitalization.

The Court: That's the entire capitalization.

Mr. Chazin: He admits the signature on those four certificates, he admits the signature on the endorsement, but he doesn't remember signing it.

There was also put in evidence—

The Court: What's that? He doesn't remember signing them?

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Mr. Chazin: No, he doesn't remember signing those certificates. His signature is there, if your Honor please, as large as day, on the front and back of these four certificates totaling twelve hundred and fifty shares, but he doesn't remember signing those certificates; and they must have been given to him with a lot of papers; and he is a very innocent, careless fellow who doesn't know what's going on, who sits during the taking of depositions, makes voluminous notes, and sits alongside of counsel with his voluminous notes and tells counsel what to ask. And the man doesn't know what's going on.

He is the same man, your Honor, who on the original depositions, when asked for certain records, a certain book of his, said his secretary who used to work for him

took it home and she never brought it back, so he can't get it.

I remember your Honor made some remark about no secretary of yours would ever be permitted to do anything like that.

So the transaction was very simple, so far as his signing, issuing all the stock and transferring it over.

And he also signed a resignation. He admits his signature on it.

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The Court: He doesn't remember that, either?

Mr. Chazin: He doesn't remember that, either.

Now, a lawyer is supposed to have traduced him. He didn't know what he was doing. But it happens that this exhibit, which was shown to you by Mr. Brigadier, P-80, is admitted to have been drawn up by Mr. Marcus and Mr. Bierman themselves, one night at the Riviera, without the help or interference, if you call it that, of counsel.

And Mr. Marcus signed it, he made changes in it in his handwriting, initialed it, and applied—and the testimony is in the depositions—that the two five thousand dollar checks which were given to him, for which he receipted on this receipt, were applied on account of the ultimate transaction.

And in his own language he says, "Deposit pending negotiations for purchase of my stock of Milmar Estates, Inc., which includes all outstanding stock, excepting that stock owned by William Miller and Al Bierman."

Now, on the deposition he was asked some very simple questions. "What claims do you have against Milmar Estates, Inc.? What claims do you have against Bill Miller's

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Riviera?" And his answer always was, "I don't know until my lawyers tell me."

Now, finally, he reached the point where he had to commit himself, because here he saw this fund—this property

turned into cash, and he was afraid that they might distribute it. So he had to act. So he files an application for a receiver. And what does he say in that application? After all, in an application for a receivership he must state facts. So when we get through with all of the propaganda in the application, there are two alleged facts. He says he was induced to sell by fraud. And the fraud was, No. 1, they told him that the business was bad, whereas it was good.

There is an affidavit of his—a man who was formerly his accountant, that Marcus knew as much as anybody about the affairs of the company, used to be in there all the time and get practically daily reports.

The second item of alleged fraud—and that, by the way, is uncorroborated, just his own affidavit—The second item of alleged fraud, and that's all the fraud he sets forth in the affidavit—of course, in the argument there is a lot of talk, but that's the only other item of fraud set forth in

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the affidavit—that there was a first mortgage on the property; that the first mortgagee in prior years had consented to take smaller payments than the payments called for by the mortgage; that Mr. Marcus in a prior year had arranged that, but this particular year Miller told him that the mortgagee refuses to take smaller payments, and he was, therefore, afraid the mortgage was going to be foreclosed.

There is no corroboration of the mortgagee. The mortgagee was right in New York. He could have called him for a nickel. That was the cost of a telephone call then. He knew the mortgagee. He, himself, had arranged that with the mortgagee.

Now, when they got down to the application for a receivership, that was all they could dig up. And the reason they haven't filed a counterclaim and the reason that they haven't filed an action is that they have nothing to go on. They are looking.

Excerpts from Hearing August 11 to 12, 1954

But Marcus would like to walk into court, without presenting to the court sufficient evidence to entitle him to a receivership, and willy-nilly get a receivership, just as he got effective action by filing that lis pendens which Mr. Brigadier described.

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Now, I make the point to your Honor that on the application for a receiver, no receiver was appointed. There was not sufficient proof before this Court to appoint a receiver.

The Court: Before what court?

Mr. Chazin: Before your Honor, on the application made by Mr. Marcus. He filed a petition before your Honor to appoint a receiver. We came in and argued that and then it was consented to put this fund—

The Court: That's right. But there was never a determination on it.

Mr. Chazin: There was never a determination on that.

Now, I say as to that, Mr. Marcus is now acting as if he had a receiver appointed. And he says, "if they are creditors, let them go and prove their claims and get paid."

What I say is this, your Honor, that the fund has been held intact by the Court. But the time arises when the urgent necessities require some of the fund to be paid out. And if it isn't, if those things aren't to be paid, on the objection of Mr. Marcus, if they are not to be paid out—I don't

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say to the creditors of Bill Miller's Riviera, I say to Milmar Estates, Inc., so that it could use it to pay the creditors of Bill Miller's Riviera, if it wants to; but to it, not directly to the creditors of Bill Miller's Riviera.

If Mr. Marcus objects to that money being paid out, or part of it being paid out, and wants to hold the entire fund, he must prove a case entitling him to the appointment of a receiver. And that he has not done, because on the argument, on the receivership, it was pointed out to the Court

that the application for a receivership must be ancillary to main relief sought in the principal case by the petitioner. And also, the cases hold, that in that posture of affairs there must be a strong likelihood—not merely a possibility, a strong likelihood of the plaintiff prevailing in his main action.

Now, here is an application which, if granted—paying out of this approximately a hundred ninety-four, say two hundred thousand out of the seven hundred thousand, would still leave over five hundred thousand in the fund with the Master, plus thirty-five thousand which is deposited with the Clerk of this Court, plus ninety-five thousand, or ninety

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thousand, which Mr. Marcus would have to return if he attempts to claim a rescission. So that there would be on hand $625,000 to satisfy any possible claim which, by the remotest possibility, Mr. Marcus might be able to prove.

And I feel for that reason, your Honor, that the application of Mr. Brigadier should be granted.

Mr. Davis: If it please the Court, Judge Grosman has kindly consented to allow me to address the Court rather than answer anybody else at this time.

You know, I feel, on behalf of the creditors, the general creditors of Bill Miller's, like a shuttlecock in a badminton game. I am going back and forth, back and forth, for six months now. And all the creditors know—at least those that I represent, is that they are not being paid.

And there are certain things that I would like to present to your Honor at this time because I appreciate your Honor's position. You are looking for a legal reason why you should pay the general creditors of Bill Miller's.

The Court: That's right.

Mr. Davis: Now I say, sir, that—first, I don't know who Mr. Grosman and Mr. Tepper had to try to serve their

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papers. All I know is that I proceeded in the Superior

Excerpts from Hearing August 11 to 12, 1954

Court of New Jersey, Chancery Division, with a complaint and order to show cause for the appointment of a receiver and joined as party-defendant Milmar Estates and Bill Miller's Riviera, alleging, among other things, the commingling of funds, and that there was an insolvency, or such assets as to indicate an insolvency. And I didn't have any difficulty serving the defendant corporation. They were served by Judge Grimshaw's secretary, Mr. Welsh, who served—I don't know who he served, but all I know is an attorney by the name of Francis McEntee entered an appearance for both corporations.

And, among other things, after a considerable length of time, and after numerous continuances, an answer was filed by both corporations alleging in the answer that Bill Miller's Riviera has an interest in the fund, namely, the seven hundred and seventy some odd thousand dollars, to the extent of three hundred thousand dollars. That is an answer by the corporate defendant and by which the corporate defendant is bound.

And I say, sir, just on that—for that reason, because there is an answer by a corporate defendant, that—admitting that there is money due to Bill Miller, that would be

sufficient to approve the payment to whoever the Court wants to make the payment to for further transmittal to the general creditors.

However, I want to point out this very substantial fact. On September 15, 1948, a lease was entered into by Milmar Estates, Inc., by Al Kevelson, President, and Bill Miller's Riviera, Inc., by William Miller.

Now, that lease is, in my opinion, a very crucial point. Marcus, whatever his interest may be in this entire matter, never took any step whatsoever to say there shouldn't have been a lease—that I have this position in the corporation, Milmar Estates; that Kevelson should not have acted as

President; that I was never consulted; that anything that the corporation did could not bind me and my interests.

They have taken advantage of the position of Milmar Estates to this very day and just stood back and said nothing that Milmar Estates did was wrong, that it was doing acts beyond the scope of the corporate powers.

Now, I say very frankly, for five years Bill Miller's Riviera to the general world was the only corporation that

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existed. Nobody knew, except the attorneys and possibly the parties in interest, but the general public knew nothing about Milmar Estates being owner of the corporate fee. But the general creditors extended credit to an existing corporation, Bill Miller's Riviera. They extended credit for five years from the time of this lease.

Now, whatever benefits have accrued to Mr. Marcus, assuming that they do accrue, will accrue by virtue of the fact that Bill Miller's was a going concern and built a reputation and built up the premises, that the leasehold was the thing that everybody knew about, not just the ordinary vacant land.

Fortunately for the corporation—whichever corporation it was that owned the land—the State Highway Department wanted to come through and build a road.

But I say, sir, even looking beyond the legal grounds, there are equitable grounds, and your Honor sitting as a United States District Court Judge can look at the equities of the situation. Mr. Marcus can lose nothing, as Mr. Brigadier showed before, by the payment to general creditors, because the fund isn't going to be dissipated. The fund is going to remain in Court so far as Mr. Marcus

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is concerned. His interest is going to be "X" dollars. There is enough money in court to meet that obligation, if it accrues.

Now, I say, sir, in all fairness to these general creditors who have gone along with numerous requests for continuances in the State court—and I can truthfully say this, whether it's off the record or on the record—if it wasn't for the fact that Walter Winne was involved, that A. Chazin was involved, that Mr. Brigadier was involved, that Mr. Tepper and Mr. Grosman was involved, I would have insisted that a receiver be appointed in the State court at the last time that this matter was heard in May.

But these gentlemen said, "Look. Let's not add cost upon cost to this fund, because if a receiver was appointed in the State Court I don't know how much more the court would allow the receiver, and the attorney for the receiver, for fees and costs, and one thing and another."

Now, I, in good conscience, in behalf of these creditors and my clients—the amount due my clients totals about thirteen or fifteen thousand dollars, of approximately seventy-five thousand, so that I represent substantial interests—in spite of the fact that they said, "Go ahead," I said,

"No. I don't want to burden these corporations with extra expense. I have a consideration for the fellow-members of the bar."

In fact, there was a call put through that day to Mr. Kevelson in Chicago, advising Mr. Kevelson of the situation. And I have a written guarantee by Milmar Estates for the payment of creditors, as well as Mr. Kevelson.

So I say, sir, here is a written guarantee to which Mr. Marcus has never objected. He could have gone to either the State court or to this Court and sought an injunction time and time again against whatever action Milmar Estates took, so far as their actions with third parties or Bill Miller's was concerned. But they sat back and are trying to reap the benefit of any situation or any contract that Milmar made with Bill Miller's.

Excerpts from Hearing August 11 to 12, 1954

Now, I say, sir, that there are other things that I want to bring to the Court's attention. For instance, Bill Miller's own the property, the personal property in the premises. I don't know what happened to that money. It more than likely was co-mingled with the funds of Milmar Estates.

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But the creditors, the general creditors, haven't gotten anything out of that. In fact that was one of the allegations in my original complaint. What happened to that money? So far as the general creditors are concerned, they think that they are being fleeced. And I can't blame them for thinking that way. They extended credit to a corporation. They knew nothing about two corporate entities.

And I say, sir, that in fairness to these general creditors, that in view of the answer of Milmar Estates in a Chancery proceeding that there is three hundred thousand dollars due, in view of the fact that there is a guarantee by Milmar Estates to the creditors that I represent, that there should be payment.

Now, I can't see how Mr. Marcus is going to be hurt by payment of eighty-eight thousand dollars, which roughly is about eleven percent of this total sum. And I say very honestly—and I have even discussed this with counsel—that doesn't take into consideration my costs, or other incidentals that can be determined at a later date between the parties. But these general creditors have been patient. Mr. Winne has been—he stated yesterday—bothered by fish

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men, and everything else. I can assure you I have had more calls—or as many calls as Mr. Winne has had. And to be truthful with you, I have been trying to shove them off on Mr. Winne, because I was tired of getting them. And every representation has been made to Judge Grimshaw, to the people themselves, that these general creditors were going to be paid.

Excerpts from Hearing August 11 to 12, 1954

Now, Milmar Estates is reaping the benefit of Bill Miller's operation over a period of five years. And legally and equitably these general creditors should be paid.

And I must say, sir, that if the Court wants me to—I don't want to burden the testimony or make the proceedings any lengthier—but I would like to submit into evidence this lease, this guarantee, the complaint and the answer in the Chancery proceedings.

And I say with that in front of the Court, then I think you will be—resolve that the application, so far as point five, with reference to the general creditors, should be approved.

And furthermore, let me say this, that there was also—I want to say this in conclusion—that in the Superior Court

of New Jersey, the State of New Jersey, by the Acting State Highway Commissioner, deposited in the court the proceeds —that's the seventy-five hundred dollars that went down the drain—and one of the parties that was made a defendant was Bill Miller's Riviera, Inc.

The Court: But you see, unfortunately, Mr. Davis, nobody disputes that they should be paid in equity and good conscience. It is impossible that Milmar and Riviera think they are going to keep this money and pay nobody. That's out of the question. But I don't know what part of that fund belongs to Bill Miller's Riviera. I mean, officially.

Mr. Davis: Assume for the sake of argument that what you say is correct. And I will agree with your Honor that—

The Court: You don't believe that I don't want to pay people. I pay my own debts, why shouldn't other people pay them.

Mr. Davis: I say, sir, then that Mr. Marcus is coming into this Court without clean hands, because he is fully protected. The Court is only concerned, basically,—Is anything due to Mr. Marcus; and, if so, what amount?

Excerpts from Hearing August 11 to 12, 1954

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The Court: If I could answer that I'd be a wonder.

Mr. Davis: Well, that may be so, but—

The Court: That may be true when we get through with the trial, too.

Mr. Davis: That's right. But I say, sir, Mr. Marcus should not in good conscience come into this Court and stop payment to general creditors at this time. And I say to Mr. Grosman and Mr. Tepper, that they ought to at this time get up and say to the Court, "We will agree and consent to the payment, because we will lose nothing."

Mr. Tepper: May I be heard for a moment?

Mr. Davis: May I say this, your Honor? I want to go to Connecticut with my wife to visit my daughter and I don't know what Mr. Tepper is going to say, but I know able counsel may be able to answer him. With the Court's permission, I would like to be excused.

The Court: You may be excused.

Mr. Davis: And if the Court wants to read these documents, I will be glad to bring them out at any time.

The Court: If I think it is necessary.

Mr. Davis: That's right.

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The Court: You have already heard my philosophy. I pay my own debts, why shouldn't other people pay them, even if they are corporations?

Mr. Davis: Thank you, very much.

The Court: Mr. Tepper, you heard Mr. Davis' eloquent plea for his clients.

Mr. Tepper: Yes, sir. I rise because of Mr. Davis' invitation that I should express myself to the Court on the subject.

I agree that creditors who have money coming from debtors should be paid. Nobody quarrels with that.

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Excerpts from Hearing August 11 to 12, 1954

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Now, we have here Milmar Estates, Inc. It is a separate and distinct corporation. Your Honor has put his finger right on the point. There isn't any way that your Honor can make an order touching upon the payment of anything to anybody, other than Milmar Estates, and only, in the case of Milmar Estates, where everybody agrees that the amount is correct.

Your Honor isn't going to authenticate a claim. Your Honor isn't going to sit as receiver. We asked that a receiver be appointed, not to encumber this estate with expense, but to relieve the Court. The Court shouldn't as-

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sume responsibility and Counsel shouldn't impose upon the Court the responsibility and address things to his conscience which should not be addressed. He shouldn't be required to, because there may be an expense to the estate, adjudicate something which is not before him and which he shouldn't take the time even to consider. That should be done through a receiver.

Now, insofar as Milmar Estates, Inc., is concerned, that corporation was made a party defendant in the condemnation proceedings. So was Marcus, so was Marcus' wife, and many others.

In the case of Marcus and Marcus' wife, we filed with the State Highway Commission in the condemnation proceedings notice, a declaration that we claim the money that Milmar is not entitled to.

It was for said reason, see, that the Highway Commission declined to do anything until there was some determination on our side. They were on notice.

So how was that done? It was done through the cooperation of Judge Grosman and myself in saying to Counsel, opposing counsel, "We will give you a discharge of the lis pendens."

Excerpts from Hearing August 11 to 12, 1954

Irrespective of what Mr. Brigadier may say, this lis
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pendens was filed in contemplation and preparatory to the filing of a suit. I take it a counterclaim is a suit. So we filed the lis pendens.

If the lis pendens was improper, improvidently filed, they had their remedy. It was on record for many, many months. They didn't move to discharge it. It was there.

So insofar as your Honor is concerned, the presumption must be that the lis pendens was properly upon the record. And based upon an agreement with Counsel, we discharged voluntarily this lis pendens, which we didn't have to do. We could have adjudicated the entire thing and had all of the money tied up, but in the interests of acceleration of this matter, and cooperation with counsel, we consented to the discharge of the lis pendens, and it was discharged upon condition, the consent being that which was made before your Honor.

And your Honor will recall when Mr. Brigadier—or Mr. Kesselhaut I think it was who said, "Why should we have a receiver with all of these expenses? Will you not go along?" Your Honor will remember that.

The Court: Yes, I remember.

Mr. Tepper: I said, "Why do you impose upon the Court
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that way? It's an injustice to the Court for you to say that. There should be a receiver."

Now, there wasn't a receiver. But in the case of Milmar Estates, Inc., there is a right way of doing things and there is a wrong way of doing things. This, today, is the wrong way of trying to get what they seek to accomplish.

The right way would have been for a receiver to have been appointed for Milmar Estates, Inc., and then let the receiver, stepping into the shoes of Milmar Estates, Inc., deal with the creditors by making certain applications and starting certain actions. That they didn't do.

Excerpts from Hearing August 11 to 12, 1954

Another thing, Milmar Estates, Inc., was left with all of the equipment in the establishment. They know that that equipment was sold. They know that money was realized for that equipment. I don't know why the fish peddler wasn't paid out of that.

The Court: That's what I have been thinking all the while. How is it they weren't paid out of that money?

Mr. Chazin: I am told there were many other creditors and that was a final payment of creditors.

The Court: Oh, it was?

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Mr. Tepper: I might also say this. Assuming that there were, then they should have marshaled what they had. They should have taken all of their creditors, as is normally done in practice—and I might say, while we are on the subject, that Mr. Marcus himself, individually, is a creditor to the extent of many, many thousands of dollars, evidenced by notes of Milmar Estates, Inc.

Since their application is a class application, it is also an application for Mr. Marcus as an individual. This was the suit that Judge Grosman referred to, that we tried to institute, in which they refused to acknowledge service. Mr. Miller being the statutory agent, and being out of town, we had nobody, no person upon whom to make service.

But in the case of Mr. Davis, Mr. Davis brought in also, in some fashion or another, Milmar, about which we knew nothing, and apparently in some conference with counsel on the other side, who wanted to see—and properly so—the creditors of Milmar Estates paid, said, "If that suit is started we will enter an appearance," and they did by filing an answer.

I didn't understand what Mr. Davis meant when he said that there was an answer filed admitting the debt. He

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didn't state for the record whether the answer was on the

part of Milmar admitting the debt of Milmar to Bill Miller's Riviera or an answer on the part of Bill Miller's Riviera admitting the debt on its part.

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• • • There should be an order made only directing that taxes be paid on behalf of Milmar Estates, which are owed, not by Bill Miller's Riviera to the Government, but by—

The Court: Milmar Estates.

Mr. Tepper: —Milmar Estates to the United States Government.

And there should not be paid this bank note now, which on its surface appears to be a recent situation, but they have given us a statement showing renewals, etc. And after examining that we may consent to that because it will be in the interest of anybody concerned to have it paid, if

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it is the debt of Milmar Estates.

And other than that, Mr. Winne can be ordered—the language in here is that your Honor should order and direct Mr. Winne, who is a Master of the Court,—he isn't even under bond—to withdraw certain money from here and invest it in legals. What is legals? Going into the mortgage business, first mortgages, when this thing may be cleared up in six months or eight months?

I don't think the Court is going to do anything like that, or even assume the responsibility of doing anything like that.

So I respectfully urge upon your Honor—

The Court: I suppose they mean legals that are recognized by the State of New Jersey as proper investments for trust funds, don't you?

Mr. Brigadier: Yes.

Mr. Tepper: That's right, first mortgages.

Excerpts from Hearing August 11 to 12, 1954

The Court: They do permit it?

Mr. Tepper: First mortgages, up to a certain percent, indeed it is.

The Court: Is that so?

Mr. Tepper: Sure. So that would permit them to go

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into the mortgage business.

The Court: No.

Mr. Brigadier: The notice says legal investments authorized under the laws of the State of New Jersey.

Mr. Tepper: That's right. And a first mortgage, I represent to your Honor, is a legal investment on the part of a trustee up to a certain percentage of the value.

So he could go out and make a mortgage for five years, or for six years, or for seven years, and where would the fund be?

The Court: I don't think Mr. Brigadier wants that, either.

Mr. Tepper: But there would be no objection, of course, in taking all of this money and putting it into a Government bond, or Government bonds, on a diversified basis, under the custody and supervision of the bank, because as it stands now the Master is only a stakeholder insofar as being a party signatory on the account, with the bank assuming not to release anything until the further order of this Court. Therefore, there is no bond of any kind.

I have the highest regard for Mr. Winne. If I had $750,-

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000 I would entrust it to him. But we are representing clients and you are the Court.

So I respectfully urge that the application be denied in its entirety, with the exception that payment should be made to the United States Government of the indebtedness of Milmar Estates, Inc.

Excerpts from Hearing August 11 to 12, 1954

The Court: You see, the thing that puzzles me, Mr. Brigadier, is this. Bill Miller's Riviera, Inc., is not even a party in this litigation.

Mr. Brigadier: I think I am going to satisfy your Honor on—

The Court: A total stranger, as far as I am concerned.

Mr. Brigadier: I ask leave of Court to withdraw, without prejudice, the last paragraph of the relief sought, paragraph 7. That is the reference to Bill Miller's Riviera.

Instead I will serve a separate application, based upon evidence that you can take notice of, to dismiss the mastership. Because that is the only way I think—if I get your Honor's thinking in this matter—that is the only way I can reach the fund.

The Court: Well, one thing is settled. Mr. Tepper concedes that any lawful debts of Milmar Estates, Inc., should

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be paid, is that right?

Mr. Tepper: Yes, sir.

The Court: And all that they want now on those notes is an opportunity to look into what you gave them, and if they are convinced they are renewals, they will consent to the payment of those.

Mr. Brigadier: I served them with a copy. May I file with you the original of that affidavit so that you will know what it is all about.

The Court: All right. Now, what disposition will we make of the present motion then?

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The Court: Yes. And I think that you can get together on that and will get together.

Excerpts from Hearing August 11 to 12, 1954

—10—

And you have no objection to Mr. Winne, as Master, paying all the just obligations of Milmar Estates, Inc. So that should be done without any trouble.

Now, as to the bank, you want to be satisfied, after you read the information that they have given you, that they are old obligations of Milmar Estates, Inc., is that right?

Mr. Tepper: Yes.

The Court: And not new ones that have been incurred since.

Mr. Tepper: That's right.

The Court: And, of course, anything they owe the Government, Milmar Estates, should be paid.

Mr. Tepper: But not the Bill Miller—

The Court: No, I will not order any of Bill Miller's Riviera, Inc., and I can't order it. They are not a party to this proceeding. How can I order it, Mr. Brigadier? You are a very good lawyer. You teach law to neophytes. How could I make an order affecting Bill Miller's Riviera?

Mr. Brigadier: Sir, I can't add to anything I have already said before. And I don't think—

The Court: I don't think I can.

Mr. Brigadier: I don't think you want me to repeat my

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argument.

The Court: No, sir. I'll have to deny that request.

Mr. Brigadier: Well, I asked to withdraw it, you remember.

The Court: Oh, yes. That may be withdrawn.

Mr. Brigadier: I contemplate another application today.

The Court: All right.

Mr. Brigadier: That was without prejudice.

The Court: Yes, sir.

Mr. Tepper: Your Honor, do I understand that Counsel is going to address another motion on the same subject to the Court? If so,—

Excerpts from Hearing August 11 to 12, 1954

Mr. Brigadier: I will inform you.

Mr. Tepper: —I urge the Court to have it dismissed with prejudice, because we have argued here for two hours on it, if it's the same point, that the Milmar Estates should pay the debts of—

The Court: Not unless he is going to bring in some new matter and some law.

Mr. Brigadier: I have told you what my application was, sir. My application was going to be to discharge the mastership.

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The Court: Oh. Well, that's something else again.

Mr. Brigadier: Yes. That's all.

The Court: All right.

And again, in the spirit of cooperation, I shall ask you gentlemen to go as fast as possible and bring it to trial.

Mr. Tepper: I might say to your Honor that what we would like to reserve, and without making any point of it at this time, is any motion addressed to a fund in Court for counsel fees at the termination of this action, if we can make out a case for that. In other words, we are making no application as we go along on these motions. And it may be that at the termination of these proceedings we should like to make an application, so we reserve the right to make any such applications.

The Court: If you are entitled to it, you may reserve it.

Order

(Filed—August 23, 1954)

This matter having been heard by the Court on August 11th and 12th, 1954 in the presence of Maurice C. Brigadier, Esq., attorney for defendant, Milmar Estate, Inc., Robert

Order

D. Grosman, Esq. and Jules E. Tepper, Esq., attorneys for defendant, Samuel Marcus, and Abraham Chazin, Esq. of the firm of Chazin & Chazin, attorneys for the plaintiffs, and good cause appearing THEREFOR;

It is on this 21st day of August, 1954 ORDERED;

1. That Walter G. Winne, Master heretofore appointed by the United States District Court in the above cause be and is hereby permitted, authorized, directed and instructed to pay from the funds on deposit in his name as Master of this Court in the Peoples Trust Company, Hackensack, N. J. to the United States Government, Director of Internal Revenue, the sum of $42,583.41, plus accrued interest at 6% per annum from May 7th, 1954, being income and excess profit taxes due the United States of America from Milmar Estate, Inc. for the fiscal years ending March 31st, 1950, March 31st, 1951 and March 31st, 1952 as set forth in Schedule "B" attached to the Notice of Motion served and filed by Maurice C. Brigadier, Esq., attorney for defendant, Milmar Estate, Inc., returnable on said August 11th, 1954, and which Notice of Motion has been filed in this cause.

2. That Walter G. Winne, Master heretofore appointed by the United States District Court in the above cause be and is hereby permitted, authorized, directed and instructed to pay from the funds on deposit in his name as Master of this Court in the Peoples Trust Company, Hackensack, N. J. to the Public National Bank & Trust Company, Pitkin and Watkins Avenues, Brooklyn, New York, the sum of $65,000.00 and interest in payment of two notes of Milmar Estate, Inc. discounted with the said Bank on July 21st, 1954 and due on August 21st, 1954, one in the amount of $40,000.00 and the other in the amount of $25,000.00, as

set forth in Schedule "A" attached to the said Notice of Motion.

/s/ ALFRED E. MODARELLI
J.U.S.D.C.

Notice of Motion to Vacate Order of August 21st, 1954

(Filed—September 16, 1954)

To: MAURICE C. BRIGADIER, Esq.
Attorney for Defendant, Milmar Estates, Inc.
40 Journal Square
Jersey City 6, New Jersey

MESSERS. CHAZIN & CHAZIN
Attorneys for Plaintiffs
30 Journal Square
Jersey City, New Jersey

WALTER G. WINNE, Esq.
Master—U. S. District Court
210 Main Street
Hackensack, New Jersey

GEORGE KESSELHAUT, Esq.
Attorney for Al Kevelson
786 Broad Street
Newark, New Jersey

GENTLEMEN:

TAKE NOTICE that on the fourth day of October, 1954 at the hour of ten o'clock in the forenoon, at the United States District Court Chambers, Post Office Building, Federal

Notice of Motion to Vacate Order of August 21st, 1954

Square, in the City of Newark, I shall apply to the Honorable Alfred E. Modarelli, United States District Court Judge, for the following relief:

1. To vacate the Order entered in this cause on the 21st day of August, 1954 directing Walter G. Winne, Esq., Master, to pay the sum of $65,000 together with interest to the Public National Bank and Trust Company, Pitkin and Watkins Avenue, Brooklyn, New York, on the ground that said Order was improvidently entered, without a prior adjudication by this Court and without the consent of the defendant, Samuel Marcus with respect to the payment of said sum of $65,000.00 to said Public National Bank and Trust Company of Brooklyn, New York.

2. That the person or persons responsible for the entry of said order, be required to restore to the account of Walter G. Winne, Master, for the funds of Milmar Estate, Inc. in the Public National Bank and Trust Company of Brooklyn, New York the aforesaid mentioned sum of $65,000 with interest paid out by Walter G. Winne, Esq., Master, as aforesaid, under the Order of August 21st, 1954.

This application will be based upon the minutes of the argument made to the Court on the plaintiff's application for the payment of said funds to said Bank and to the United States Government, Director of Internal Revenue, etc.; as well as upon the depositions taken in this case.

/s/ Robert D. Grosman
Robert D. Grosman, Esq.
Attorney for Defendant, Samuel Marcus

Dated: September 9th, 1954

Notice of Motion

(Filed—September 16, 1954)

To: Robert D. Grosman, Esq.,
Attorney for Defendant, Samuel Marcus,
24 Commerce Street
Newark 2, N. J.

Jules E. Tepper, Esq.,
Of Counsel for Defendant, Samuel Marcus,
1060 Broad Street
Newark, N. J.

Chazin & Chazin, Esqs.,
Attorneys for Plaintiffs,
30 Journal Square
Jersey City, N. J.

George Kesselhaut, Esq.,
Attorney for Al Kevelson,
786 Broad Street
Newark, N. J.

Walter G. Winne, Esq.,
Master of the United States District Court
210 Main Street,
Hackensack, N. J.

Sirs:

Please take notice that on the 4th day of October, 1954, at 10 o'clock in the forenoon or as soon thereafter as the matter may be heard, Milmar Estates, Inc. will apply before the Honorable Alfred E. Modarelli, Judge of the United States District Court for the District of New Jersey, at the Federal Building, in the City of Newark,

Notice of Motion

N. J., for an order modifying the order heretofore entered in the above entitled cause on the 18th day of February, 1954 so as to require Walter G. Winne, Esq., Master of the United States District Court, to pay over to Milmar Estates, Inc. the entire balance now contained in the account created pursuant to said order at the Peoples Trust Company of Bergen County, 210 Main Street, Hackensack, N. J., which account is designated "Walter G. Winne, Master of the United States District Court" or in the alternative, that the said Walter G. Winne, Esq., Master of the United States District Court, be ordered to pay over to Milmar Estates, Inc., one-half of the balance remaining in the aforesaid account.

The ground for said motion is that no reason exists at the present time in point of law or fact for withholding the said monies from Milmar Estates, Inc., and the said application will be based upon the entire record in the above entitled matter, including the depositions taken in this cause and the affidavits heretofore filed with the court in this cause.

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for Defendant, Milmar Estates, Inc.

Dated: September 15th, 1954

Notice of Motion

(Filed—October 7, 1954)

To: Robert D. Grosman, Esq.,
Attorney for Defendant, Samuel Marcus,
24 Commerce Street
Newark 2, N. J.

Jules E. Tepper, Esq.,
Of Counsel for Defendant, Samuel Marcus,
1060 Broad Street
Newark, N. J.

Chazin & Chazin, Esqs.,
Attorneys for Plaintiffs,
30 Journal Square
Jersey City 6, N. J.

George Kesselhaut, Esq.,
Attorney for Al Kevelson,
786 Broad Street
Newark, N. J.

Walter G. Winne, Esq.,
Master of the United States District Court
210 Main Street,
Hackensack, N. J.

Sirs:

Please take notice, that on the 25th day of October, 1954, at 10 o'clock in the forenoon or as soon thereafter as the matter may be heard, Milmar Estates, Inc. will apply before the Honorable Alfred E. Modarelli, Judge of the United States District Court for the District of New

Notice of Motion

Jersey, at the Federal Building, in the City of Newark, N. J., for an order modifying the order heretofore entered in the above entitled cause on the 18th day of February, 1954 so as to require Walter G. Winne, Esq., Master of the United States District Court, to pay over to Milmar Estates, Inc. the entire balance now contained in the account created pursuant to said order at the Peoples Trust Company of Bergen County, 210 Main Street, Hackensack, N. J., which account is designated "Walter G. Winne, Master of the United States District Court" or in the alternative, that the said Walter G. Winne, Esq., Master of the United States District Court, be ordered to pay over to Milmar Estates, Inc., one-half of the balance remaining in the aforesaid account.

The ground for said motion is that no reason exists at the present time in point of law or fact for withholding the said monies from Milmar Estates, Inc., and the said application will be based upon the entire record in the above entitled matter, including the depositions taken in this cause and the affidavits heretofore filed with the court in this cause.

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for Defendant,
Milmar Estates, Inc.

Dated: October 4, 1954

Order

(Filed—October 14, 1954)

This matter being opened to the Court by Robert D. Grosman, Esq., and Jules E. Tepper, Esq., attorneys for the defendant, Samuel Marcus, and the consent of counsel for all the parties being hereunto appended,

Order

It is on this 14th day of October, 1954,

ORDERED that the time of the defendants, Samuel Marcus and Milmar Estate, Inc., to file answers, cross-claims or counterclaims be and is hereby extended to and including Friday, October 22, 1954.

/s/ ALFRED E. MODARELLI
Judge, U.S.D.C.

We hereby consent to the entry of the above Order.

/s/ ROBERT D. GROSMAN
Robert D. Grosman,
Attorney for Defendant,
Samuel Marcus.

/s/ JULES E. TEPPER
Jules E. Tepper,
Attorney for Defendant,
Samuel Marcus.

MAURICE C. BRIGADIER,
Attorney for Defendant,
Milmar Estate, Inc.

/s/ CHAZIN & CHAZIN
Chazin & Chazin,
Attorneys for Plaintiffs.

By /s/ ABRAHAM CHAZIN
Abraham Chazin
A Member of the Firm

Notice

(Filed—October 22, 1954)

To: Samuel Marcus and Jules E. Tepper, Esq. and Robert D. Grosman, Esq., his attorneys,

Milmar Estates, Inc., and Maurice C. Brigadier, Esq., its attorney.

Sirs:

Please take notice that the undersigned, as attorneys for the plaintiffs, Al Bierman and William Miller, in the above entitled cause, will move on the 8th day of November, 1954, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, before The Honorable Alfred E. Modarelli, Judge of the United States District Court, at the Federal Building, Newark, N. J., the hearing of the order to show cause heretofore allowed in the above entitled cause on the 28th day of December, 1950, pursuant to the provisions of the order made in the above entitled cause on the 2nd day of January, 1952, with respect to the hearing of the said order to show cause.

/s/ Chazin & Chazin
Chazin & Chazin
Attorneys for Plaintiffs

By: /s/ Abraham Chazin
Abraham Chazin
A Member of the Firm

Dated: October 22nd, 1954.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

(Filed—October 25, 1954)

• • •

CROSS-CLAIM

• • •

FOURTH COUNT

The defendant, Milmar Estate, Inc., by way of cross-claim says:

1—This defendant herein repeats the allegations contained in paragraph 1 and paragraph 2 of the Complaint to the same extent as if repeated at length herein. The jurisdiction of this Court arises out of the fact that the parties are citizens of different states, and that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs.

2—At all of the times hereinafter mentioned, the defendant, Milmar Estate, Inc., was the owner of certain real property in the City of Fort Lee, County of Bergen and State of New Jersey, which said premises were conveyed to Milmar Estate, Inc., by Deed dated June 7, 1946, executed by William Miller and Samuel Marcus, and recorded on the 1st day of August, 1946, in Book 2667 of Deeds for Bergen County, at page 35 thereof.

3—Prior to the month of October 1952, the State of New Jersey instituted a condemnation proceeding, the object and ultimate effect of which was to acquire for the State of New Jersey the title and all rights and interest in the aforedescribed property. Thereupon the State of New Jersey became obligated to make payment to Milmar Estate,

Inc., for the acquisition of the title to the said property as just compensation therefor.

4—Thereafter and on or about October 20, 1952, Samuel Marcus maliciously and without probable cause and without justification in law or fact asserted a claim of right, title or ownership in and to the aforementioned property, and Samuel Marcus did maliciously and without probable cause and without justification in law or fact, file with the Bergen County Clerk, in the Office of the Bergen County Clerk, a Notice of Lis Pendens captioned in the above entitled cause, which said Notice of Lis Pendens described the premises and property above mentioned, and which Notice of Lis Pendens was recorded in the public records of the said County Clerk, to wit, Liber 43 of Lis Pendens, page 467.

5—The Notice of Lis Pendens aforementioned states in part as follows:

> "NOTICE is hereby given that a suit entitled as above has been commenced and is now pending in said United States District Court, District of New Jersey.
>
> The general object of said suit is to compel the above named defendants to interplead and determine their rights to collect the obligation described in the complaint filed in such suit and the installments thereof; to discharge the above named plaintiff from all liabilities to said defendants upon payment into the Registry of said Court of the moneys mentioned in the complaint."

6—The said lands, aforedescribed, were not the subject matter of the interpleader action described in the said Notice of Lis Pendens. The lands aforedescribed being the property of the defendant, Milmar Estate, Inc., were not affected and would not be affected by the said interpleader

action. At the time of the filing of the Notice of Lis Pendens by Samuel Marcus no action or court proceeding had been instituted which might affect the said lands.

7—Since the date October 20, 1952, to the present date, no action, claim, counterclaim or court proceeding has been instituted or commenced by the said Samuel Marcus affecting or which might affect the lands described in the Notice of Lis Pendens.

8—On or about February 18, 1954, an Order was entered in the above captioned matter providing in part as follows:

> "Upon the entry of this order, the defendant, Samuel Marcus, or his attorney shall sign the necessary documents to vacate lis pendens filed by him in the County of Bergen, affecting the lands and premises of Milmar Estates, Inc., which are the subject of the aforementioned condemnation proceedings."

9—Subsequent to the entry of the aforedescribed Order and pursuant thereto the Notice of Lis Pendens was vacated by Samuel Marcus.

10—The conduct of the defendant, Samuel Marcus, in causing the said Lis Pendens to be filed, as aforesaid, constituted a malicious use of process and Samuel Marcus in causing said Lis Pendens to be filed, as aforesaid, acted for a purpose other than to secure an adjudication of any claim relating to the lands described in said Notice of Lis Pendens. The said Lis Pendens was used wrongfully and willfully for a purpose and in a manner not legally justifiable. The Lis Pendens was filed by said Samuel Marcus as a matter of desperation and to harass and embarrass Milmar Estate, Inc.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

11—By reason of the fact that the Notice of Lis Pendens was filed by Samuel Marcus, as aforesaid, the State of New Jersey delayed in compensating Milmar Estate, Inc., in the amount of the reasonable value of its property as just compensation for the taking thereof. By reason of the filing of the said Lis Pendens by Samuel Marcus, as aforesaid, the State of New Jersey refused to pay to Milmar Estate, Inc. the amount of the condemnation award. By reason of the wrongful filing of said Notice of Lis Pendens by and on behalf of Samuel Marcus, Milmar Estate, Inc. was deprived of payment to it of a fund consisting of the proceeds of the condemnation award by the State of New Jersey for the taking of said real estate and said moneys were paid to the Clerk of the Superior Court of New Jersey. As a result of the foregoing, Milmar Estate, Inc. was required to pay to the Clerk of the Superior Court the sum of $7,700.09. As a further result of the foregoing, Milmar Estate, Inc. has been and to this date is deprived of the use of the moneys constituting the condemnation award. Milmar Estate, Inc. has been continuously deprived of the opportunity to invest the said fund in income-producing investments and has otherwise sustained loss and damage.

12—The defendant, Samuel Marcus, has used the mechanics of filing a Notice of Lis Pendens to accomplish a purpose for which it was not designed, as a result of which the defendant, Milmar Estate, Inc. has suffered pecuniary loss and damage.

13—The aforesaid improper and illegal filing of the Notice of Lis Pendens was done by the defendant, Samuel Marcus, with malice and intent to damage, harass, and embarrass the defendant, Milmar Estate, Inc. and defendant, Milmar Estate, Inc. demands punitive damages for same.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

WHEREFORE defendant, Milmar Estate, Inc. demands judgment against Samuel Marcus in the amount of $100,000.00 together with interest and costs of this action.

FIFTH COUNT

The defendant, Milmar Estate, Inc., by way of cross-claim says:

1—This defendant herein repeats each and every allegation, claim and statement contained in each and every paragraph in the Fourth Count of the Cross-Claim, as hereinabove set forth, to the same extent as if repeated at length herein.

2—The conduct of the defendant, Samuel Marcus, in causing the said Lis Pendens to be filed, as aforesaid, constituted a malicious abuse of process and a malicious prosecution, and Samuel Marcus in causing said Lis Pendens to be filed, as aforesaid, acted for a purpose other than to secure an adjudication of any claim relating to the lands described in said Notice of Lis Pendens. The said Lis Pendens was used wrongfully and willfully for a purpose and in a manner not legally justifiable. The Lis Pendens was filed by said Samuel Marcus as a matter of desperation and to harass and embarrass Milmar Estate, Inc.

3—This defendant herein repeats the allegations contained in paragraph 11 of the Fourth Count of the Cross-Claim, as hereinabove set forth, to the same extent as if repeated at length herein.

WHEREFORE defendant, Milmar Estate, Inc. demands judgment against Samuel Marcus in the amount of $100,000.00 together with interest and costs of this action.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

SIXTH COUNT

The defendant, Milmar Estate, Inc., by way of cross-claim says:

1—This defendant herein repeats the allegations contained in paragraph 1 and paragraph 2 of the Complaint to the same extent as if repeated at length herein. The jurisdiction of this Court arises out of the fact that the parties are citizens of different states, and that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs.

2—This defendant herein repeats the allegations contained in paragraph 2 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

3—This defendant herein repeats the allegations contained in paragraph 4 of the Fourth County of the Cross-Claim to the same extent as if repeated at length herein.

4—This defendant herein repeats the allegations contained in paragraph 5 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

5—The effect of the acts of defendant, Samuel Marcus, as aforesaid, was to disparage and slander the defendant's title to the property aforedescribed.

6—This defendant herein repeats the allegations contained in paragraph 6 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

7—This defendant herein repeats the allegations contained in paragraph 7 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

8—Since the date October 20, 1952, to the present date, no action, claim, counterclaim or court proceeding has been instituted or commenced by the said Samuel Marcus affecting or which might affect the lands described in the Notice of Lis Pendens.

9—The claims and allegations contained in the Notice of Lis Pendens filed by Samuel Marcus were and are false and defamatory and were known by Samuel Marcus to be false and defamatory when the said Notice of Lis Pendens was filed in the public records, as aforementioned, and the said claims and allegations were asserted by Samuel Marcus willfully and maliciously and with the intent to injure Milmar Estate, Inc. and its title to said property. The Notice of Lis Pendens containing said false and defamatory matter was filed by Samuel Marcus willfully and maliciously and with the intent to thereby injure Milmar Estate, Inc. and its title to said property.

10—As a result of the aforesaid acts of Samuel Marcus, the slanderous and defamatory matter was communicated to all persons examining and inspecting the public records wherein the said Notice was filed.

11—This defendant herein repeats the allegations contained in paragraph 10 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

12—This defendant herein repeats the allegations contained in paragraph 11 of the Fourth Count of the Cross-Claim to the same extent as if repeated at length herein.

WHEREFORE defendant, Milmar Estate, Inc. demands judgment against Samuel Marcus in the amount of $100,000.00 together with interest and costs of action.

Excerpts from Answer and Cross-Claim of Defendant, Milmar Estates, Inc.

SEVENTH COUNT

The defendant, Milmar Estate, Inc., by way of cross-claim says:

1—This defendant herein repeats the allegations contained in paragraph 1 and paragraph 2 of the Complaint to the same extent as if repeated at length herein. The jurisdiction of this Court arises out of the fact that the parties are citizens of different states, and that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs.

2—This defendant herein repeats the claims, allegations, facts and statements contained in each and every paragraph of the Fourth Count, the Fifth Count and the Sixth Count to the Cross-Claim as hereinabove set forth, to the same extent as if repeated at length herein.

3—The acts and conduct of Samuel Marcus, as aforesaid, constituted a malicious interference with prospective economic advantages of Milmar Estate, Inc.

WHEREFORE defendant, Milmar Estate, Inc. demands judgment against Samuel Marcus in the amount of $100,000.00 together with interest and costs of this action.

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for Defendant, Milmar Estate, Inc.

Notice of Motion to Join Third Persons to Counterclaim

(Filed—October 25, 1954)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Equity Division

Civil Action No. 1026-50

AL BIERMAN and WILLIAM MILLER,

Plaintiffs,

—vs.—

SAMUEL MARCUS and MILMAR ESTATES, INC., a corporation organized under the laws of the State of New Jersey,

Defendants,

by original summons, and between the said
SAMUEL MARCUS,

Plaintiff,

—vs.—

AL BIERMAN and WILLIAM MILLER,

Defendants on Counterclaim,

MILMAR ESTATES, INC., *a New Jersey Corporation,*

Defendant on Cross-claim,

and

AL KEVELSON and ABRAHAM LIEBERMAN, Esq.,

Additional Defendants on Counterclaim.

Notice of Motion to Join Third Persons to Counterclaim

To:

MAURICE C. BRIGADIER, Esq.
Attorney for the defendant, Milmar Estates, Inc.
40 Journal Square
Jersey City, New Jersey

Messrs. CHAZIN & CHAZIN
Attorneys for Plaintiffs
30 Journal Square
Jersey City, New Jersey

GEORGE KESSELHAUT, Esq.
Attorney for Al Kevelson
786 Broad Street
Newark 2, New Jersey

ABRAHAM LIEBERMAN, Esq.
4000 Bergenline Avenue
Union City, New Jersey

GENTLEMEN:

PLEASE TAKE NOTICE that on Monday, the eighth day of November, 1954, at the United States District Court Chambers, Federal Courts Building, in the City of Newark, in this State, at the hour of ten o'clock in the forenoon (EST), or as soon thereafter as the matter may be heard, I shall apply to the HON. ALFRED E. MODARELLI, Judge of said Court or such other Judge as may then be hearing Equity Motions, for the following relief:

1. An Order making Al Kevelson and Abraham Lieberman, Esq., defendants to the Counterclaim set up in this defendant's answer in this cause, pursuant to Rule 13 (H) of the Rules of Civil Procedure, on the ground that their presence is required for the granting

Notice of Motion to Join Third Persons to Counterclaim

of complete relief in the determination of said counterclaim, and that the jurisdiction of the said Al Kevelson can be obtained, he having taken an active part in the prosecution of this suit, was examined on oral deposition in this cause and is represented in this matter by counsel of his own choosing, namely, George Kesselhaut, Esq., a member of the Bar of this State; that the said Abraham Lieberman is domiciled in this State and amendable to process of subpoena.

This application will be based upon the depositions of William Miller, Al Kevelson and Abraham Lieberman, taken in this cause.

Dated: October 21st, 1954

ROBERT D. GROSMAN
Attorney for Defendant-counterclaimant, Samuel Marcus

JULES E. TEPPER
Of counsel with Samuel Marcus, Defendant-counterclaimant.
Per R. J. G.

Excerpts from Hearing of December 13, 1954

—2—

• • •

Mr. Winne: Judge Modarelli, I have got a little incidental motion that I think everybody is agreed to in order to get a little compensation for Christmas for myself. And I don't think there is any objection.

The Court: That's to require the Master to pay moneys

due Winne & Banta for professional services rendered?

Mr. Winne: That's right.

The Court: Was that in the condemnation?

Mr. Winne: That's right. I represented all of the parties concerned--that is, the Milmar Estate and Bill Miller's Riviera, both in the condemnation trial and for a great deal of negotiation prior thereto, for about two years, to try to prevent condemnation.

And I have rendered a bill—I don't think anyone cares too much about the details, but I rendered a bill in detail to my client, which I thought was reasonable. And we agreed after a long conference with my client. My six page bill was the result of a compromise and both Milmar Estate and Bill Miller's Riviera, parties in interest, agree that I should be paid a sum which I agreed to take.

—3—

And I offer to your Honor for your inspection a modified bill, which was the subject of an agreement. And since the money is available, I gave everyone notice that I would apply to the Court for permission to pay myself, or to pay my firm, out of the moneys in my hand the sum of $20,000 as a fee and $619.61 as a return of an actual out of pocket disbursement.

The Court: That was in compromise, I see.

Mr. Winne: That's right. I, frankly, rendered a bill of $50,000 and as a result of a long discussion agreed to take the lesser sum, which I think is a moderate charge, and everyone I talked to thinks it is a moderate charge.

The Court: Is there anyone who feels that Mr. Winne shouldn't be paid or that his bill is excessive in any way?

Who did you serve notice on, because I can't go wading through all these? Have you got a copy of the notice?

Mr. Winne: Yes, sir. I served notice on Mr. Grosman, Mr. Tepper, Chazin & Chazin, Mr. Kesselhaut, Mr. Brigadier.

Excerpts from Hearing of December 13, 1954

The Court: Let me have that, please.

(Document handed to the Court.)

The Court: Suppose we take them down in the order in which they appear on the notice.

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The Court: All right, give me an order and I will sign it.

* * *

Order

(Filed—January 14, 1955)

Certain motions having come before the Court, in the above matter on December 13, 1954, as hereinafter set forth in this Order, and the following counsel having appeared thereon: Robert D. Grosman, Esq. and Jules E. Tepper, Esq., Attorneys for Defendant, Samuel Marcus, Maurice C. Brigadier, Esq., Attorney for Defendant, Milmar Estate, Inc., Chazin & Chazin, Esqs., by Theodore S. Chazin, Esq. and Abraham Chazin, Esq., Attorneys for Plaintiffs, Al Bierman and William Miller, George Kesselhaut, Esq., Attorney for Al Kevelson, and Abraham Lieberman, Esq., Pro Se; and the Court having heard the arguments of Counsel, and good cause appearing therefor,

It is on this 14th day of January, 1955,

ORDERED

1. The motion of Samuel Marcus to join third persons to counterclaim is denied as to Abraham Lieberman, Esq. The motion is granted as to Al Kevelson, The Court find-

ing that the counterclaim of Samuel Marcus is a compulsory counterclaim over which the Court has ancillary jurisdiction, and the Court further finding that the joinder of Al Kevelson does not deprive the Court of jurisdiction.

2. The following motions are carried to the final hearing and trial of the case:

A. Motion of Samuel Marcus, by Robert D. Grosman, Esq., his Attorney, to vacate the order of August 21, 1954, and for other relief set forth in the same notice of motion.

B. Motion by Milmar Estate, Inc., by its Attorney, Maurice C. Brigadier, Esq., for an Order modifying the Order heretofore entered on February 18, 1954, so as to require Walter G. Winne, Esq., Master of the United States District Court, to pay over to Milmar Estate, Inc. the entire balance in the account created pursuant to said Order in the Peoples Trust Company, Hackensack, N. J., or in the alternative, one-half of said balance.

C. Motion of the plaintiffs, Al Bierman and William Miller, by Chazin & Chazin, Esqs., their attorneys, moving the hearing of the Order to Show Cause heretofore allowed in the above entitled cause on the 28th day of December, 1950, pursuant to the provisions of the Order made in the above entitled course on the 2nd day of January, 1952, with respect to the hearing of the said Order to Show Cause. The restraints contained in the said Order to Show Cause are hereby continued until the trial of this case and until the further order of this Court.

D. Notice of motion by defendant, Samuel Marcus, by Robert D. Grosman, Esq. and Jules E. Tepper, Esq., his Attorneys, to require inspection of books and records.

Order

IT IS FURTHER ORDERED that this case be set down for trial on Thursday, January 20th, 1955.

/s/ A. E. MODARELLI
U.S.D.J.

We hereby consent to the form of the above Order.

/s/ CHAZIN & CHAZIN
Chazin & Chazin
Attorneys for Plaintiffs

/s/ ABRAHAM CHAZIN
By: ABRAHAM CHAZIN, Esq.
A member of the Firm.

/s/ JULES E. TEPPER
Jules E. Tepper, Esq.
and

/s/ ROBERT D. GROSMAN
Robert D. Grosman, Esq.
Attorneys for Defendant, Samuel Marcus

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier, Esq.
Attorney for Defendant, Milmar Estate, Inc.

/s/ GEORGE KESSELHAUT
George Kesselhaut, Esq.
Attorney for Al Kevelson

Excerpts from Hearing of April 23 to 24, 1956

—23—

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Mr. Winne: Addressing myself to this paragraph, I think there must be a qualification in this paragraph that the money that I have in my hand be paid over after certain sums have been reserved for another purpose. I don't want to argue it now, but I am under levy from the United States Government in a very large sum of money for taxes, and there are a couple of other minor amounts levied from the Sheriff's office that I think have got to be reserved, and an allowance to myself I think has got to be reserved. So I don't like the language that this be forthwith paid over, the entire balance, because the balance can't be paid over, because it is subject to certain reservations.

The Court: That can be taken care of. Mr. Schapira, I agree.

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The Court: Yes, sir.

Now, your problem, Mr. Winne.

Mr. Winne: Well, I don't think it will concern the Court too much, but I want to be protected when this final order is entered against a claim that I obey the Court's order and

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pay out moneys and then I am called upon to pay them out again to somebody. And in that respect I will be extremely brief.

The Federal Government has filed from time to time liens, levies, pieces of paper by an Internal Revenue man that is levying on this money that is in my possession. I must protect myself against those levies. If they should be paid, the Court should order them paid. The United

Excerpts from Hearing of April 23 to 24, 1956

States Attorney is present and a representative of the Internal Revenue Department, and if your Honor should find they should be paid, I think it should appear on the record that the government was represented, that the United States of America was here. They have been advised by me to be here, and they are here. And whatever is done in this order should bind the United States of America against ever claiming that I unjustly or improperly paid these moneys over, if that is what the Court orders.

So there probably should be some reservation in this order concerning these claims. I will state that there is a lien filed upon me claiming against B. M. R. Corporation trading as Bill Miller's Riviera in the sum of $6,361.31, upon which there probably is interest.

There is a lien filed with me against Bill Miller's Riviera, Inc., for $71,343.64, upon which there is probably interest.

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There is a lien or levy filed upon me against Milmar Estates, Inc., for $30,537, upon which there is probably interest.

I have asserted that I have no funds in my hands belonging to anyone except Milmar Estate, Inc., but the government still claims that the moneys I have are subject to levy against these other corporations.

Now, I had a great deal of correspondence during this period with individual creditors. I imagine the same people that wanted a receiver appointed. And as to those I think I ought to state to the Court that I told them I could not protect them. I answered any inquiry about what money I had, and how it was being held. For instance, Mr. Lieberman served a bill on me for his $29,000, or whatever it is, and I told him I could take no responsibility in getting him paid. All I could do is tell him the facts.

And the same way with their accountant, a man named Hoffman. He served a bill on me for some forty odd thou-

sand dollars. And a great many individual creditors through their attorneys have served me.

(Comments off the record.)

Mr. Winne: So with one exception I have not taken any responsibility about any of these letters claiming sums, whether they are correct or not. But in one instance the

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firm of Wilentz, Goldman, Spitzer & Sills of Perth Amboy got a judgment. Now, the judgment is against Bill Miller's Riviera for the sum of $1,234.69. Nevertheless, they did get a sheriff's execution and had the sheriff serve me with an execution. And I think there should be some reservation as to that; if it is going to be paid, pay it out of the fund, or somehow or other protect me against that levy.

Now, as Mr. Brigadier was good enough to say, having in mind this hour would come when your Honor was going to make an order, I said I was going to apply to your Honor for a modest allowance for the trouble I have had since I was designated to hold this money, and rather than burden your Honor with the obligation, or the duty of fixing the amount, the gentlemen in question, Milmar, Bill Miller and Kevelson, met in my office and I agreed to accept the sum of $3,500, and they agreed that I should be paid out of moneys in my hand the sum of $3,500. And I think I would like to be protected by the Court's order in that respect.

Now, the only other thing I have to say, if your Honor please, is that I would like not to have everybody in a race to try to get me to sign checks while the adversary proceedings are trying to get me not to sign checks. As I understand the law, the mere taking of an appeal will not stay

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your Honor's judgment. But, on the other hand, there undoubtedly will be, I assume, an effort to get a stay, possibly to file a bond, and I do think that the final judgment in this

case ought to direct me to execute the judgment at a certain time, not forthwith, because if you say forthwith, before I get to my office the gentlemen will be there to try to get me to draw checks. And on the other hand, these gentlemen will be running down to Philadelphia trying to get a stay.

So I think for my own protection—I am serious about it, if I should pay this money out, and these gentlemen then made a claim that I paid it precipitously, and shouldn't have paid it until they had a chance, they will be suing me for all this money. And I think that the order should definitely provide when I should distribute such moneys as your Honor orders distributed.

I would like the record to show who is here from the government, please.

Mr. Herman Scott: Your Honor, I am here on behalf of the government. As to the first item mentioned by Mr. Winne, the $6,000 levy on account of tax indebtedness of B. M. R. Corporation, I want to state that the government is withdrawing that levy.

However, the levy of $71,000 against Bill Miller's Riviera still stands.

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Mr. Scott: So we have $71,000 on that account, and we have made an additional levy of $30,967 against Milmar Estate, Inc., for the same type of taxes, and income taxes.

However, an additional levy will be made of approximately twenty-one thousand, bringing that particular account up to $51,871. So the total amount due to the government in this case is $123,842.25.

The Court: A hundred and twenty-three thousand.

Mr. Scott: Of course, your Honor, interest has been run-

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ning on this account.

Excerpts from Hearing of April 23 to 24, 1956

The Court: Oh, yes, galloping interest, I know.

Mr. Scott: And for that reason I would ask that a portion of that claim be paid to the government now to save all the parties here some money, and in the meantime, we will get some, too.

It appears that there is substantial agreement between the accountants for the corporations and the Internal Revenue agents that approximately a hundred thousand dollars of this amount is not in dispute. There is some dispute about some penalties and interest. So I would suggest that there be an immediate distribution of a hundred thousand dollars to the government now, at the present time, and that there be reserved from distribution an additional $25,000, which would cover the balance due to the government.

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The Court: • • • Now, didn't you get any attachments by creditors—fish peddlers and fishmongers?

Mr. Winne: No, I had no legal documents served upon me—

The Court: Except Mr. Wilentz' clients, and that's against Bill Miller's Riviera, Inc.?

Mr. Winne: That was a levy by the sheriff, but the judgment was against Bill Miller's Riviera, Inc.

The Court: So therefore you refused to pay it since you have no funds of Bill Miller's Riviera, Inc.

Mr. Winne: That's right.

Mr. Chazin: If your Honor please, the reason that those creditors didn't push was because Mr. Kevelson personally paid a number of them or made arrangements with them.

The Court: He did, personally? That's very nice of Mr. Kevelson.

Does that finish our work for today?

Mr. Brigadier: As far as I know.

Excerpts from Hearing of April 23 to 24, 1956

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The Court: Of course, Francis, I shall require a transcript of all this, which I will again have to analyze and synthesize to decide what I should do.

Mr. Scott: Do I understand, your Honor, that there will be a reservation of distribution until these tax matters are resolved?

The Court: There will be no distribution ordered by me until I am certain of what I am doing, because I don't want Mr. Winne to get in trouble, and I don't want to get in trouble, either, about this case.

Mr. Scott: Very well.

• • •

Notice of Motion for Summary Judgment

(Filed—September 24, 1956)

To: Maurice Brigadier, Esq.
Attorney for Defendant Milmar Estate, Inc.
26 Journal Square
Jersey City, New Jersey

Sir:

Please take notice that on Monday, October 8, 1956, at 10 A. M. or as soon thereafter as counsel can be heard, I shall apply to the Hon. Alfred E. Modarelli at the United States District Court for the District of New Jersey at the Federal Building in Newark, New Jersey for an order for the entry of a summary judgment in favor of the defendant Samuel Marcus and against the defendant Milmar Estate, Inc., dismissing the fourth, fifth, sixth, and seventh counts of the cross-claims of the defendant Milmar Estate, Inc.

against the defendant Samuel Marcus. In support of this application I shall rely on the affidavits of Jules Tepper and Samuel Marcus, annexed hereto, as well as upon all of the pleadings heretofore filed in this cause and upon the prior proceedings had in this cause.

Dated: September 20, 1956.

s/ MAURICE SCHAPIRA

Maurice Schapira
Attorney for Defendant
Samuel Marcus

Affidavit in Support of Motion for Summary Judgment

STATE OF NEW JERSEY,
COUNTY OF ESSEX, *ss.*:

JULES TEPPER, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am an attorney and counsellor at law of New Jersey. I was co-counsel of record in the within cause for the defendant Samuel Marcus with the late Robert D. Grosman, who died subsequent to the trial of this case. Since the passing of Mr. Grosman, Maurice Schapira, Esq., has been substituted as attorney of record for the defendant Samuel Marcus.

2. At the time Mr. Marcus retained Mr. Grosman and myself as his attorneys in the within action, he disclosed not only his own contentions but also the conflicting contentions of the plaintiffs Al Bierman and William Miller and the defendant Milmar Estate, Inc. More particularly, while

Mr. Marcus advised us of the conflicting claims of himself and the other parties as to the ownership of Milmar stock, he at no time claimed any direct or indirect interest personally in Milmar's real or personal property.

3. At no time in the course of these proceedings and prior to the filing of a notice of lis pendens on October 20, 1952, did Mr. Marcus consult with me, to the best of my knowledge, or with Mr. Grosman concerning the filing of a notice of lis pendens nor did either Mr. Grosman or myself ever advise or consult with Mr. Marcus concerning the same until after the filing of the same. To the best of my knowledge and belief the decision to file a notice of lis pendens and the actual filing thereof was the sole decision of Mr. Grosman, taken without the knowledge of Mr. Marcus.

4. On October 20, 1952, Mr. Grosman, as aforesaid, filed a notice of lis pendens in the office of the Clerk of Bergen County, which was recorded in Book 43 of Lis Pendens page 467. This notice stated in full as follows:

> "Notice is hereby given that a suit entitled as above has been commenced and is now pending in said United States District Court, District of New Jersey.
>
> "The general object of said suit is to compel the above named defendants to interplead and determine their rights to collect the obligation described in the complaint filed in such suit and the installments thereof; to discharge the above named plaintiff from all liabilities to said defendants upon payment into the Registry of said Court of the moneys mentioned in the complaint. The lands which may be affected in said suit by a counterclaim to be filed at an appropriate time, are described as follows:"

There then followed a description of the land in question.

Notice of Motion for Summary Judgment

5. Subsequently, the State Highway Commissioner of the State of New Jersey instituted condemnation proceedings before the Hon. J. Wallace Leyden, Judge of the Superior Court of New Jersey, Bergen County, in a cause entitled "In the Matter of the Petition of the State Highway Commissioner of the State of New Jersey for the Condemnation of Lands of Milmar Estate, Inc., a Corporation of New Jersey". A petition in that cause, dated June 2, 1953, and verified June 15, 1953, set forth the existence of record of the aforesaid notice of lis pendens in the following terms:

> "Your petitioner further shows that the owner of record of the said lands and premises is Milmar Estate, Inc., a corporation of New Jersey; that no other person or corporation appears of record to have any interest in the said lands and premises except Tessie Schlesinger, residing at 400 West End Avenue, New York, and Julia Steinberger, residing at 185 East 182nd Street, Bronx, New York, the present holders of a certain mortgage made by William Miller and Samuel Marcus to Michael Realty Company, a corporation of New Jersey, under date of April 5, 1946 in the sum of $300,000.00 and duly recorded in the Office of the Clerk of Bergen County on April 10, 1946, in Book 2093 of Mortgages at page 202&c, and duly assigned to the said Tessie Schlesinger and Julia Steinberger by assignment dated July 29, 1949 and duly recorded in said clerk's office on August 5, 1949, in Book 369 of Assignments of Mortgages at page 256&c, which said mortgage affects the said lands and premises; State of New Jersey which, by reason of corporation franchise tax against Milmar Estates, Inc., a corporation of New Jersey, has or may claim to have an interest therein; Mary Miller, otherwise known as Anna Miller, whose place of residence is unknown, wife of William Miller,

who has or may claim to have an inchoate right of dower therein; Sarah Marcus, residing at 685 West End Avenue, New York, New York, wife of Samuel Marcus, who has or may claim to have an inchoate right of dower therein; Al Bierman, residing at Charlotte, North Carolina, and William Miller, residing at 161 Brayton Street, in the City of Englewood, in the County of Bergen and State of New Jersey each of whom, by reason of a Lis Pendens recorded and filed on October 20, 1952 in Book 43 of Lis Pendens in the County Clerk's Office of Bergen County at page 467 and a suit pending in the United States District Court for the District of New Jersey, wherein Al Bierman and William Miller are plaintiffs and Samuel Marcus and Milmar Estate, Inc., a corporation of New Jersey, are defendants, has or may claim to have an interest therein; Bill Miller's Riviera, Inc., a corporation of New Jersey which, as tenant, occupant, or otherwise, has or may claim to have an interest therein; Eli Quain, residing at 1420 Grand Concourse, Bronx, New York who, as tenant, occupant, or otherwise, has or may claim to have an interest therein; Samuel Marcus, residing at 685 West End Avenue, New York, New York who has or may claim to have an interest therein; Borough of Fort Lee, in the County of Bergen, a municipal corporation of New Jersey which, by reason of certain taxes and assessments duly levied and assessed, has or may claim to have an interest therein."

6. The record of the aforesaid proceedings shows that this petition was served upon the defendant Milmar Estate, Inc., on or about June 29, 1953.

7. The next action which appears of record which resulted in affecting the aforesaid notice of lis pendens was a notice of motion for restraint dated January 19, 1954,

filed by Mr. Grosman as attorney for the defendant Samuel Marcus, in which application was made to restrain the plaintiffs and the defendant Milmar Estate, Inc., from receiving or taking into their possession a certain condemnation award of $757,410.00, made by the Commissioners in the suit of the State Highway Commissioner.

8. The aforesaid application came on for hearing before this Court on January 25, 1954, along with certain other matters then pending in this cause, in the presence of the attorneys for all the parties hereto. Mr. Brigadier, the attorney for Milmar, was the first to address the Court on the subject matter of the said application. He stated, among other things, as follows (Tr. 1/25/54, p. 22-23):

> "But, as I say, all the rest of it, the receivership, the restraints, all of it will become purely academic.
>
> Now, you might say, 'Well, how can it become academic? There are seven hundred and fifty thousand there that have to be protected in the meanwhile.'
>
> And this is what I would like to propose to your Honor. If a short date can be fixed, the matter set down for trial, there will be no problem of the seven hundred and fifty thousand.
>
> I spoke to Mr. Winne this morning and a suggestion was made between us which I think would solve this whole problem. Mr. Winne said, 'Why not do it this way: Offer to have the seven hundred and fifty thousand held by Winne & Banto, in a trust account, not to be disposed of in any way except by order and direction of this court.'
>
> Now, if that is done, why any need for receiverships, or restraints, or any of this other interlocutory nonsense that we are now apparently engaged in? It will mean that this money can be put out on interest, so that my clients are not going to be high-jacked, with

the threat of losing this interest, into trying to force them into doing something that they might not want to do of their own free accord. And they are in no way injured. And, therefore, that is what I would like to suggest to your Honor."

After further colloquy, the matter was taken up by Mr. Kesselhaut, attorney for the defendant Kevelson, as follows (Ibid. at p. 59):

"If your Honor will bear with me just for one moment, I think I have a suggestion that I am quite certain—well, I know will meet with the approval of both Mr. Tepper and Judge Grosman and I hope with counsel on the other side. That is, we are all in agreement that there are seven hundred and some odd thousand dollars. We don't know where it will eventually go. We do know it will go to Milmar Estate. But who are the stockholders of Milmar Estate will be determined on final hearings.

I would like to suggest that Walter Winne be designated by this Court as a Master of this Court to hold those monies under the direction of this Court and not to disburse them without the prior order of this Court.

Mr. Winne, I am quite certain, will consent to accept it, assuming that he does get the money at some time between now and final hearing."

Thereafter, all parties indicated their consent to this proposal, and as a result an Order was signed and filed in this cause on February 18, 1954, which provided (1) that the aforesaid proceeds of the condemnation award should be paid to the Peoples Trust Company of Bergen County, Hackensack, New Jersey for deposit in an account designated "Walter G. Winne, Master of the United States District Court", and (2) for creating the lis pendens. A copy

of this order is annexed hereto and made a part hereof as Exhibit "A".

9. As appears by the "Notice of Payment of Condemnation Award Into the Superior Court of New Jersey, Chancery Division" in the aforesaid condemnation proceedings, the State Highway Commissioner, on March 5, 1954, caused to be paid into the Superior Court of New Jersey, Chancery Division, the sum of $776,459.41, the amount of the condemnation award. This was done without the prior knowledge or instigation of Mr. Marcus or his attorneys.

10. On June 4, 1954, an order was entered in the aforesaid condemnation proceedings in the Superior Court of New Jersey, Chancery Division, by the Hon. John Grimshaw, Judge of the Superior Court, upon consent of the attorneys for all of the parties hereto, including the defendant Milmar Estate, Inc., providing for the payment of the proceeds of the aforesaid condemnation award to Walter G. Winne, Master of the United States District Court, in accordance with the aforesaid order of this Court of February 18, 1954. A copy of this order is annexed hereto and made a part hereof as Exhibit "B". As a result of this order the said money was paid into the said account of Walter G. Winne.

/s/ JULES E. TEPPER
Jules Tepper

Sworn to and subscribed
before me this 12th day
of September, 1956.

/s/ ESTHER MC DEVITT
A Notary Public of New Jersey

• • •

Exhibit "B"

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY

DOCKET NO. C1313-53

Civil Action In Condemnation

STATE OF NEW JERSEY By the ACTING STATE HIGHWAY COMMISSIONER,

Plaintiff,

—VS.—

MILMAR ESTATE, INC., A Corporation of New Jersey, *et al.*,

Defendants.

ORDER DIRECTING PAYMENT OF FUNDS

IT APPEARING to the Court that there was paid into the Superior Court of New Jersey, Chancery Division, on or about March 10, 1954, the sum of Seven Hundred Seventy-six Thousand, Four Hundred Fifty-nine Dollars and Forty-one Cents ($776,459.41) as the result of an award made by Commissioners in Condemnation, to be paid by the Acting State Highway Commissioner, for the acquisition by condemnation for public use by the State of New Jersey, certain lands situate, lying and being in the Borough of Fort Lee in the County of Bergen and State of New Jersey, and more fully described in a certain Petition filed in the office of the Clerk of Bergen County and addressed to the Hon. H. Wallace Leyden, one of the Judges of the Superior Court of New Jersey.

Exhibit "B"

AND IT FURTHER APPEARING that the following parties appear by the Order of Payment dated March 5, 1954 and the Notice thereof dated March 10, 1954, to be the owner or owners and persons interested in said land and premises and the award therefor:

> Tessie Schlesinger; Julia Steinberger; Mary Miller, otherwise known as Anna Miller; Sarah Marcus; Al Bierman; William Miller; Eli Quain; Samuel Marcus; State of New Jersey; Borough of Fort Lee, in the County of Bergen, a municipal corporation of New Jersey; Milmar Estate, Inc., a corporation of New JJersey; Bill Miller's Riviera, Inc., a corporation of New Jersey.

AND IT FURTHER APPEARING that Tessie Schlesinger and Julia Steinberger are the holders of a mortgage which encumbered said premises, and have consented in writing to the entry of this judgment and that by the provisions of the Order of the United States District Court for the District of New Jersey, the amount of the mortgage held by them is to be paid to them from the fund in Court when it has been transferred pursuant to this Order.

AND IT APPEARING that Mary Miller, otherwise known as Anna Miller, conveyed and transferred all of her interest in the said premises to Milmar Estate, Inc. by deed dated August 6, 1949, duly executed and acknowledged, and recorded in the Bergen County Clerk's office on May 19, 1954 in Book 3536, page 195. And the grantor of said deed is Ann Miller of 176 Seeley Street, Brooklyn, N. Y., and former wife of William Miller, and that no other person named Mary Miller or Anna Miller has any interest in the award which was the subject of the above condemnation.

AND IT FURTHER APPEARING that Sarah Marcus conveyed and transferred all of her interest in the said real estate

which was the subject of said condemnation, to Milmar Estate, Inc., by deed dated October 16, 1951 and recorded October 25, 1951 in the Bergen County Clerk's office in Book of Deeds 3260, page 240, so that said Sarah Marcus has no interest in the said award.

AND IT APPEARING that Al Bierman and William Miller are Parties Plaintiffs in the action in the United States District Court for the District of New Jersey, hereinafter referred to, in which Samuel Marcus and Milmar Estate, Inc., are Parties Defendants, and that Al Bierman and William Miller, through their attorneys, Chazin & Chazin, have consented to the entry of this Order, and their interest, if any, in said fund will be preserved by deposit in the Peoples Trust Company of Bergen County, Hackensack, New Jersey, according to the terms of the Order heretofore made in said Court by the Hon. Alfred E. Modarelli.

AND IT FURTHER APPEARING that Eli Quain, heretofore on May 14, 1954, conveyed all of his interest in said land and premises, the subject of said condemnation proceedings, to the State of New Jersey by deed dated that date and duly acknowledged and recorded in the Bergen County Clerk's Office in Book 3536, page 246. Therefore said Eli Quain has no interest in said fund.

AND IT APPEARING that the State of New Jersey by letter dated May 27, 1954 from the Department of Law and Public safety, signed Stanley E. Rutkowski, Deputy Attorney General, certified as follows:

> Re: State of New Jersey, By the Acting State Highway Commissioner vs Milmar Estate, Inc., a corporation of New Jersey, et al
>
> Docket No. C1313–53

Exhibit "B"

I have been advised that application will be made to the Court in accordance with Rule 4:92-11 for an order directing the distribution of the fund deposited in the Court on March 5, 1954.

The payment of this fund was paid into Court in accordance with N. J. S. A. 20:1-15, subject to distribution upon application of any party in interest according to the statute and practice of the Court.

Please be advised that we have no further interest in the distribution of these monies.

AND IT FURTHER APPEARING by proof satisfactory to the Court, that the Borough of Fort Lee, in the County of Bergen, a municipal corporation, has received taxes in full for the year 1953 and the first quarter of 1954, and therefore has no interest in said award.

AND IT FURTHER APPEARING that Milmar Estate, Inc. through its attorney, Maurice C. Brigadier, has consented to the entry of this order and that its interest in said fund will attach to the deposit of said monies in the Peoples Trust Company of Bergen County, pursuant to the order of the United States District Court referred to herein.

AND IT FURTHER APPEARED that Bill Miller's Riviera, Inc., has executed a deed to the State of New Jersey of the premises which are the subject of said award, dated March 10, 1954 and acknowledged the same date and to be recorded in the Bergen County Clerk's office this 4th day of June 1954 and that the said Bill Miller's Riviera, Inc., through Francis A. McEntee, its attorney, has consented to the entry of this Order.

AND IT APPEARING to the Court that in the suit heretofore referred to in the United States District Court for the

Exhibit "B"

District of New Jersey, one of the Defendants is Samuel Marcus who has consented to the entry of this Order through his attorneys, Robert D. Grosman and Jules E. Tepper, and that in the said suit the interest of the parties thereto, viz. Al Bierman, William Miller, Samuel Marcus and Milmar Estates, Inc. were by United States District Court Judge Alfred E. Modarelli, by order dated February 15, 1954, consented to by all the parties of said action, ordered protected by the payment of the award in condemnation referred to herein in the following matter:

> The State Highway Commissioner of the State of New Jersey shall pay over the proceeds of the condemnation award made in favor of Milmar Estates, Inc. by the Commissioners in condemnation in the matter of the Petition of the State Highway Commissioners of the lands of Milmar Estates, Inc., a corporation of New Jersey before Honorable J. Wallace Leyden, Superior Court Judge, Bergen County, New Jersey, which premises are situated in Fort Lee, Bergen County, New Jersey, owned by Milmar Estates, Inc., and which premises are commonly known as "Bill Miller's Riviera" to Peoples Trust Company of Bergen County, 210 Main Street, Hackensack, New Jersey, which said bank shall receive said money and place the same upon deposit in an account designated "Walter G. Winne, Master of the United States District Court, District of New Jersey; and which said money shall not be disbursed by said banking institution or subject to withdrawal by any person except upon the express order of the United States District Court, District of New Jersey; no bond shall be required of the bank, Peoples Trust Company and Walter G. Winne, Master.

IT IS THEREUPON on this 4th day of June, 1954 ordered as follows:

Exhibit "B"

1. That Mary Miller, otherwise known as Anna Miller; Sarah Marcus; Eli Quain; State of New Jersey; Borough of Fort Lee, in the County of Bergen, a municipal corporation, have no interest in said award of Seven Hundred Seventy-six Thousand, Four Hundred Fifty-nine Dollars and Forty-one Cents ($776,459.41) heretofore paid into the Superior Court of New Jersey, Chancery Division.

2. That the interest of Tessie Schlesinger and Julia Steinberger, as mortgagees, will be protected by payment heretofore provided, pursuant to the consent of their Counsel, attached hereto.

3. That the interests of Al Bierman, William Miller, Samuel Marcus, Milmar Estates, Inc., and Bill Miller's Riviera, if any, in said award, shall attach to and be protected by payment of said funds as hereinafter ordered, and as consented to by their respective counsellors.

4. That the Clerk of this Court shall forthwith make out a check for said funds, less the statutory charges to Walter G. Winne, Master of the United States District Court, District of New Jersey, and transmit said check directly to the Peoples Trust Company of Bergen County, 210 Main Street, Hackensack, New Jersey, as provided in the Order of the United States District Court for the District of New Jersey hereinabove recited.

JOHN GRIMSHAW
J.S.C.

Exhibit "B"

RE: CONSENT TO THE ENTRY OF THE ABOVE ORDER

MAURICE C. BRIGADIER
MAURICE C. BRIGADIER
Attorney for Milmar Estates, Inc

CHAZIN & CHAZIN
CHAZIN & CHAZIN
Attorneys for Al Bierman and William Miller

By: Abraham Chazin
A Partner

WINNE & BANTA
Attorney for Bill Miller's Riviera

By W. G. Winne, a partner

ROBERT D. GROSMAN
ROBERT D. GROSMAN

and

JULES E. TEPPER
JULES E. TEPPER
Attorneys for Samuel Marcus

BARKAVE G. ELIAN
Atty for Tessie Schlesinger and Julia Steinberger

Affidavit in Support of Motion for Summary Judgment

STATE OF ,
COUNTY OF , *ss.*:

SAMUEL MARCUS, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above entitled action.

Affidavit in Support of Motion for Summary Judgment

2. After the commencement of the within action in which I was made a defendant, I retained the late Robert D. Grosman and Mr. Jules Tepper as my attorneys. At the time when I retained them and in conferences subsequent thereto, but prior to October 20, 1952, I made a complete disclosure of the facts, including not only my own version of the facts, but also in detail the contentions of the other parties hereto, including the plaintiffs Al Bierman and William Miller and the defendant Milmar Estate, Inc. In particular I advised them of the conflicting claims of myself and the other parties hereto to the ownership of the Milmar stock, but I at no time claimed any direct or indirect interest personally in Milmar's real or personal property.

3. At no time did I have any discussion with my attorneys concerning a notice of lis pendens or the necessity, desirability, or advisability of filing such a notice. In fact, I neither knew what such a notice was, nor did I have any knowledge that such a notice had been filed on my behalf by my attorneys until long after the same was filed in this case. I first became aware that any such notice had been filed on my behalf when the crossclaim of the defendant Milmar Estate, Inc. was served upon my attorneys and brought to my attention in October, 1954.

/s/ Samuel Marcus
Samuel Marcus

Sworn to and subscribed
before me this 11th day
of September, 1956.

/s/ Max Leichtman
Max Leichtman
Notary Public of New York

Excerpts from Hearing of October 24, 1956

—21—

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Mr. Schapira: Well, your Honor, we are appealing, of course, from the various points of your judgment. And

—22—

one of the points in your judgment is that there was five hundred and some-odd thousand dollars to be turned over to Milmar.

The Court: Nobody disputes that that belongs to Milmar.

Mr. Schapira: No, there is no dispute on that. But there is a dispute as to whether or not this contract, the original contract entered into, was a proper legal contract. If I recall correctly, there was an allegation made that it was nudum pactum, that there was no contract from the outset.

The Court: Of course, that was only said after the interpleader was filed. Before that nobody said there was no contract.

Mr. Schapira: Well, that wasn't even in controversy until the interpleader was filed. I mean there wasn't any question to be adjudicated until after the interpleader was filed, if your Honor please. As I see it, there wouldn't have been any controversy at all if the interpleader hadn't been filed, until the distribution of the assets of that corporation, because then—

The Court: Oh, my, my! How can you say that, after all of the time I put in that opinion; how can you make such a statement? At no time did Marcus ever claim that he owned any part of that, until the interpleader was

—23—

started. Then all of a sudden he said, "I own half of the stock"—he said, "I own all the stock," I understand he says now, "I only own half the stock." Maybe when he gets to the circuit he will make it three-quarters of the stock.

Mr. Schapira: I admit that that is what your opinion said, if your Honor please.

Excerpts from Hearing of October 24, 1956

The Court: And amply supported by the evidence. I was going to make a deadly parallel of all the conflicting statements made by one witness in the case, particularly the one who said, "I signed affidavits without reading them." I said, "Wait till the circuit reads that one, then they will know how you can rely on the sworn statements."

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The Court: Now hold it, please. This case has been characterized with this bickering from the first day it started. And the mistake that was made here—this is not criticism, you all meant well—you fellows yielded too often to the other side, for the sake of trying to expedite it at the end, for the sake of trying to get a little harmony out of it, not knowing that you were dealing with one who was not interested in harmony—and I don't mind saying he is not interested in justice, either, I think he is interested in spite and vengeance. He is a very wealthy man. He can hold out till the cows come home. And that I think he intends to do.

And maybe I can't look at this objectively any more, feeling as I do about the whole case, after hearing it for many, many days on end, after listening to more perjury in one trial than I have listened to in any other case I have heard

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since I am on this bench, which is six years; maybe I can't be objective any more about it.

• • •

Memorandum

(Filed—October 26, 1956)

An application has been made by defendant Samuel Marcus for a stay of execution of the judgment dated and filed October 19, 1956, pursuant to the provision of Rule

73(d). Amongst the proposals submitted by the defendant Marcus is that the stay be limited to one-half of the balance of $569,674.70 now on deposit in the Peoples Trust Company of Bergen County, in the account of Walter G. Winne, Master, United States District Court, upon the posting by him of a supersedeas bond in the sum of $250.00 to cover alleged costs, interest, and damages.

Under paragraph 13 of the final judgment entered in this matter, defendant Marcus is entitled to receive from the Clerk of this Court the sum of $35,600.00, which is the total interpleaded fund less the award of a $500.00 counsel fee. He further proposed to leave this fund on deposit with the Clerk of the Court as security for any interest and damages for delay which the plaintiffs, Al Bierman and William Miller, the defendant, Milmar Estate, Inc., and the added third-party defendant, Al Kevelson, might be entitled to recover should the final judgment be affirmed. He further states that if the sum of $569,674.70 is left in the custody of the Master pending the appeal, his $35,600.00 award would be more than ample to cover interest for a full year.

After the interpleaded suit was filed, there was deposited in the Registry of this Court, the aforesaid sum of $35,600.00, which represented the balance due him for the sale of his stock pending the disposition of the interpleaded suit. Long after suit was instituted in this cause, some real estate belonging to Milmar Estate, Inc., was acquired and condemned by the New Jersey State Highway Commission, for which it received the $569,674.70. By stipulation of counsel, it was agreed that this sum be placed in the Master's account. Obviously, this sum was not in controversy because it did not exist when this suit was filed.

The defendant relies upon the following provision contained in Rule 73(d):

Memorandum

> " * * * When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay."

The defendant concedes and has always conceded throughout the entire litigation that the aforesaid sum received from the condemnation award and on deposit with the Master has never been the subject of any controversy; that the same has always been and is the sole property of Milmar Estate, Inc.; and that he has not and does not now assert any claim with respect to said fund. His claim is in respect to the ownership of the stock of Milmar Estate, Inc., which question has been disposed of by this court that he is not entitled to any of the stock of Milmar Estate, Inc., since he sold it. Since the said fund is not the property in controversy, and never was, the rule does not warrant the granting of any stay with respect to it; nor is there any provision in Rule 73 or Rule 62 of the Federal Rules of Civil Procedure, which empowers this court to grant a stay with respect to the condemnation fund.

The defendant Marcus would be entitled to a stay with respect to such portions of the judgment as deal with the declaration of the ownership of the stock and the requirement that he deliver up for cancellation the shares of stock in his possession; such stay, however, if desired, could only be obtained upon supplying a supersedeas bond for the damages that might be sustained by reason of such stay and the cost of appeal. There is no proof as to the value of the stock in question since Milmar Estate, Inc., is a

private corporation, and there is no demonstrative value on its stock.

The stay with respect to the condemnation fund is denied.

Order Denying Summary Judgment

(Filed—November 28, 1956)

This matter coming before the Court on motion of Maurice Schapira, attorney for defendant Samuel Marcus, for summary judgment in favor of Samuel Marcus and against Milmar Estate, Inc., dismissing the 4th, 5th, 6th and 7th counts of the cross-claim of the defendant, Milmar Estate, Inc., against the defendant, Samuel Marcus, Samuel M. Koenigsberg appearing for Maurice Schapira, in the presence of Maurice C. Brigadier, attorney for defendant Milmar Estate, Inc., and the Court having heard argument and having considered the pleadings, affidavits, prior proceedings in the cause and the briefs of the parties, and the Court finding that there are genuine issues as to material facts in dispute, and that the defendant, Samuel Marcus, is not entitled to a summary judgment as a matter of law,

It is, on this 28th day of November, 1956, ORDERED that the motion of Samuel Marcus for summary judgment against the defendant, Milmar Estate, Inc. dismissing the 4th, 5th, 6th and 7th counts of the cross claim of defendant, Milmar Estate, Inc. against the defendant, Samuel Marcus, be and hereby is in all things denied.

/s/ ALFRED E. MODARELLI
Alfred E. Modarelli
United States District Judge

Order Directing Payment Out of Funds

This matter coming before the Court on the application of Maurice C. Brigadier, Esq., attorney for defendant, Milmar Estate, Inc., and it appearing that all of the parties in interest consent to the granting and entry of the within order.

It is, on this 26th day of November, 1956 ORDERED that Walter G. Winne, Matser heretofore appointed by the United States District Court in the above cause be and is hereby permitted, authorized, directed and instructed to pay from the funds on deposit in his name as Master of this Court in the Peoples Trust Company of Bergen County, Hackensack, N. J., to the United States of America, Internal Revenue Service, forthwith the sum of $67,784.68 in satisfaction of liens asserted by the said Internal Revenue Service against Milmar Estate, Inc.

/s/ A. E. MODARELLI
J.

The undersigned, do each for his respective client hereby consent to the making of the above payment and to the entry of the within order.

/s/ MAURICE SCHAPIRA
Maurice Schapira
Attorney for defendant, Samuel Marcus

CHAZIN & CHAZIN
Attorneys for plaintiffs, Al Bierman and William Miller

By THEO. S. CHAZIN
A Member of the Firm

/s/ MAURICE C. BRIGADIER
Maurice C. Brigadier
Attorney for defendant, Milmar Estate, Inc.

/s/ GEORGE KESSELHAUT
George Kesselhaut
Attorney for Al Kevelson

Order Allowing Fee to Master

It appearing to the Court that Walter G. Winne, Esq. has had in an account with the Peoples Trust Company of Bergen County, the sum of $768,689.32 deposited on June 15, 1954, from which certain disbursements have been made, leaving in his possession as of this day the sum of $569,-674.70, including interest, and

It further appearing that various services have been rendered by said Walter G. Winne while these moneys have been in his possession, in reference to claims against the various parties, and he has been required to give attention in some degree to the proceedings before this court,

IT IS ON THIS 26th day of November, 1956, Ordered that there be allowed said Walter G. Winne, to be paid him herewith from the moneys in his hands, the sum of $3,500.00 for such services.

/s/ A. E. MODARELLI
Judge, United States District Court

We consent to the entry of the above Order.

CHAZIN & CHAZIN

By Theo. S. Chazin
Attorney for Al Bierman and William Miller

MAURICE SCHAPIRA
Attorney for Samuel Marcus

MAURICE C. BRIGADIER
Attorney for Milmar Estate, Inc.

Exhibit DM-2

(Photostat)

(See Opposite) ☞

MEMORANDUM OF AGREEMENT made in Fort Lee in State of New Jersey on this 23rd day of July, 1947 between SAMUEL MARCUS, residing at 685 West End Avenue, New York City, and WILLIAM MILLER, residing at Fort Lee, New Jersey.

WITNESSETH:

WHEREAS, there is a certain note in the sum of Fifty Thousand ($50,000) dollars which Miller has executed to Marcus, and which said note is in default, and

WHEREAS, Miller has pledged his shares of stock of MILMAR ESTATES, INC. with MARCUS as security for the payment of the said note of fifty thousand ($50,000) dollars, and

WHEREAS, both Miller and Marcus are desirous of entering into an agreement with respect to the said note and stock, and with respect to future purchase rights in the stock of MILMAR ESTATES, INC.

NOW THEREFORE, in consideration of One ($1.00) Dollar each to the other in hand paid and for good and valuable consideration, it is mutually agreed, as follows:

1. The fifty thousand ($50,000.00) dollar note, which is presently in default, will be destroyed, and a new note for fifty thousand ($50,000.00) dollars due June 1, 1948, payable $500 weekly thereafter every seven days, interest at 4%, acceleration and default clause, will be executed by Miller in favor of Marcus. This said note will be dated June 1, 1947. Upon payment of $50,000.00 and interest, note to be cancelled and Milmar stock turned over to Miller, Miller shall be liable on said note to Marcus only in the event of a foreclosure or of a forced sale of the Riviera property(forced sale to be

foreclosure or of a forced or the Riviera property(forced sale to be
a sale made after the property shall be vacant for ninety
and Miller shall be liable to Marcus in that event for his shares
sustained in proportion to shares held by Miller in Milmar

2. In accordance with the terms of the lease, between MILMAR ESTATES, INC. and BILL MILLER'S RIVIERA, INC., all monies advanced by Miller and Marcus for taxes, amortitation and interest will be considered as a loan toMILMAR ESTATES, INC., and MILMAR ESTATES, INC. will execute non-interest-bearing 5 year notes as evidence of indebtedness, repayable from surplus funds only.

In the event that either party to this agreement shall desire to sell Milmar's stock to a third party, it is herewith agreed that such stockholder shall first offer his stock to the other party by notice in writing, giving the other party thirty (30) days in which to acquire the stock of the dispossing stockholder. The notice of intention to sell shall state the sale price of the said stock, and the other stockholder, if he elects to acquire the said stock, may do so at the price stated in said notice.

Bill Marcus

Bill Miller

DM-2

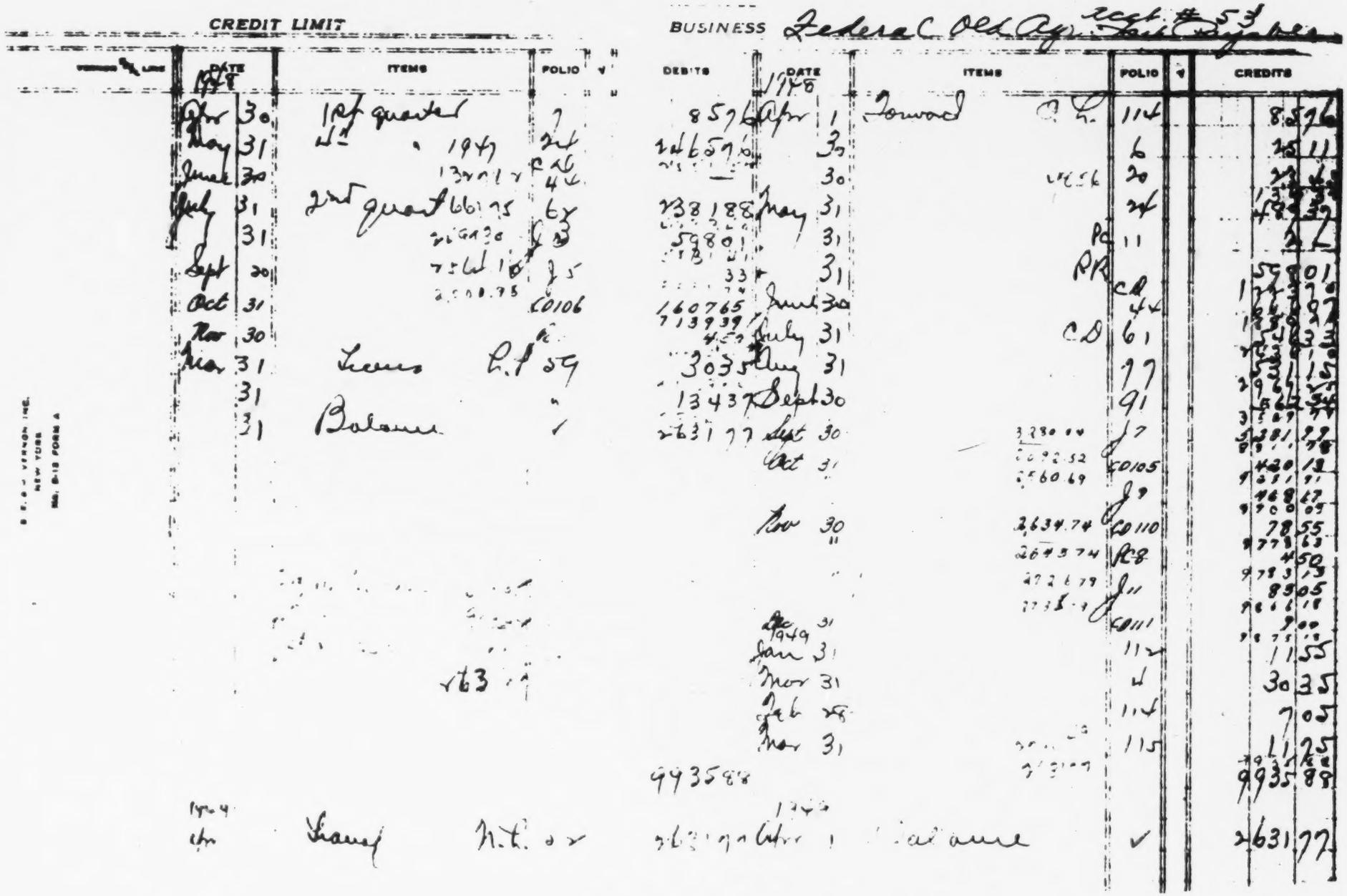
193b

EXHIBIT DM-2

Exhibit DM-6

(Photostat)

(See Opposite) ☞



CREDIT LIMIT

BUSINESS Federal Old Age Ins. Act #53 Byers

DEBITS	DATE	ITEMS	POLIO	✓	CREDITS
	1946				
857	Apr 1	Forward	114		8 57
24657	30		6		25 11
	30		20		24 68
738188	May 31		24		13 48 37
59801	31		11		2 [illegible]
33	31		RR		55 01
160765	June 30		CR 44		17 07
713939	July 31		CD 61		13 [illegible]
3035	31		77		29 [illegible]
1343	Sept 30		91		3 [illegible]
263177	Sept 30		17	3280 00	58 [illegible]
	Oct 31		CO105	2092.52	9 [illegible]
				560.69	9 [illegible]
	Nov 30		CO110	2634.74	9 [illegible]
	11		CR	2643.74	9 [illegible]
			J11	2726.79	9 [illegible]
			CO111	2735.79	9 [illegible]
	Dec 31 1949		11		9 [illegible]
	Jan 31				11 55
	Mar 31				30 35
	Feb 28		114		7 05
	Mar 31		115		11 25
4435 88					9935 88
	1947				
	Mar 31	Balance	✓		2631 77

S. F. B. - VERNON, INC. NEW YORK No. B-18 FORM 4

EXHIBIT DM-6(Cont'd)

CREDIT LIMIT

State (New Jersey) Tax Payable Acct # 54
Unemployment

DATE 1948	ITEMS	POLIO	✓	DEBITS	DATE 1948	ITEMS	POLIO	✓	CREDITS
Apr 30		7		123597	Jan 1	Balance	11		158664
30		—		158664	1		1		625137
May 31		2		81322	30		6		25911
June 30		CD 4		26607	30		20		23455
30		44A		—	May 31		94		48937
30		1			31	P.C	11		111
30		44A		100126	31	PR	1		59712
July 31		CD 61		—	June 30		44		166627
31		3		57712	30		1		66627
Aug 31	2nd quarter	1697		20814	July 31		61		83441
Sept 30		5			Aug 31		77		95453
Oct 31		CO106		160265	Sept 30		91		95547
Nov 30		P		872239			7		95547
Dec 31	Loans	P 59		30838	Oct 31		CO105		125118
31	Balance	1		512240			9		133511
					Nov 30		CO110		133511
							8		160511
							11		160511
					Dec 31		CO111		180511
					Jan 31		11		180511
					Mar 31		1		180511
							11		180511
					Mar 31		115		180511
				18.0307					180511
1949									
Jan 1	Loans	11 5		4.2240	Jan 1	Balance	✓		9.2240

N.Y. FORM A NO. 812

EXHIBIT DM-6(Cont'd)

RATING

CREDIT LIMIT

ADDRESS

BUSINESS Federal Unemployment Tax Payable Acct #55

VENDOR'S LINE	DATE 1948	ITEMS	FOLIO	✓	DEBITS	DATE 1942	ITEMS	FOLIO	✓	CREDITS
	Oct 31				103.89	Dec 31	Balance	112		1284.70
	Dec 31	Balance	J9	✓	2261.32	1943				1026.55
						Dec 31		19		3311.87
					3299.21					3299.21
	1944					1949				
	Jan 1	Loans	4L 54		2267.32	Jan 1	Balance	✓		2267.32

EXHIBIT DM-6(Cont'd)

CREDIT LIMIT

BUSINESS

Cabaret Tax Payable Account

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1948					1948				
June 30		CR 44A	1	1719497	May 1	Forward	CR 210		1422189
July 31	June	" 6	✓	1936193	May 31		6	1	1712056
Aug 31	July	" 77		1435756	June 30		77		3359586
Sept 30	Aug	" 92		1195140	July 31		92		3856165
Oct 31	"	CR 106		600000	July 31		106		761853
1949				596128	Sept 30				2471539
Mar 31	Balance	J9	✓	2701985	Oct 31				2767613
				965200			CAN		2707985
									9651200
1949					1949				
Apr 1	Transf	J 55		2707985	Apr 1	Balance	✓		2707985

EXHIBIT DM-6(Cont'd

CREDIT LIMIT

BUSINESS Kirkbride Mfg Co Payable Account

DATE	ITEMS	POLIO	DEBITS	DATE	ITEMS	POLIO	CREDITS
1948				1948			
Apr 30		7	12544	Apr 1	Balance	21	66 52 19
30	Sub.		3726	30		6	215 20
May 31	4th Quarter 1947	24	5024 15	30		20	189 50
June 30		CD 44A	27739	May 31		24	2393 80
July 31		6	4801 55	31		11	7 -
31		3	3256 40	31		PR	1 3 2 5 6 40
Sept 30		9	2621	June 30		CD	1 3 2 8 9 61
30		9	3058 80	July 31		61	1 3 4 7 50
			3686 60	July 31		77	1 3 7 3 3 10
Oct 31		CO106	2974 80	Sept 30		91	1 3 6 3 2 30
		9	83 90			7	2 5 7 1 8 19
Nov 30		3		Oct 31		CO108	2 5 5 5 58
Nov 31	Legend N.P.	59	1420	Nov 30		CO110	2 7 0 8 50
31	Balance		41887			VC8	2 7 7 7 70
				Dec 31		CO111	2 8 4 6 20
				1949 Jan 31		11	2 8 5 5 88
				Mar 31		4	4 2 80
				Feb 28		114	185 -
				Mar 31		115	438 80
			31388				23 -
							31 388 67
1947				1949			
Apr 1	Legend N.P.	59	41887	Apr 1	Balance	✓	41887

B. F. D. VERNON, INC. NEW YORK NO. 8-18 FORM A

EXHIBIT DM-6(Cont'd)

CREDIT LIMIT

BUSINESS Legal and accounting Acc. 460

DATE 1948	ITEMS	FOLIO	✓	DEBITS
June 30		CD 44A		1050 -
July 31		" 6r		800 - 850
Aug 31		" 7r		4800 - 4450
Sept 30		9r		40000 325 00
Oct 31		9		30000 375 00
Nov 31	Balance	✓		4000 -
				7550 -
1949 Apr 1	Loans	3L 63		

DATE 1948	ITEMS	FOLIO	✓	CREDITS
Apr 1	J B Hoffman O.K.	112		3900 -
				2850 -
				2050
				1050 00
				650 00
Sept 30	J B Hoffman	J 7		36000 00
				3250 00
Oct 31	J B Hoffman	J 9		30000 00
				3750 00
				4000 -
				7550 00
1949 Apr 1	Balance	✓		40000 -

S. E. & M., VERNON, INC. NEW YORK NO. S-18 FORM A

CREDIT LIMIT

BUSINESS Accrued Rent Payable Acct # 608

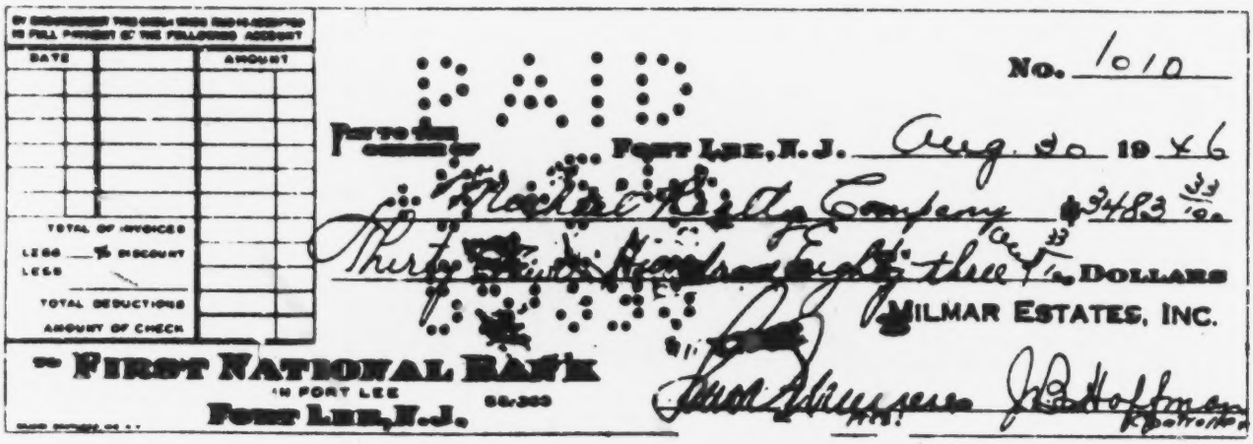
DATE 1949	ITEMS	POLIO	✓	DEBITS	DATE 1949	ITEMS	POLIO	✓	CREDITS
[illegible]		[illegible]		[illegible]	Oct 31		[illegible]		[illegible]
Nov 31	Balance		✓	1000 —					
				4000 —					4000 —
1949 Apr 1	Lease	M.L.	65	1000 —	1949 Apr 1	Balance		✓	1000 —

EXHIBIT DM-6(Cont'd

Exhibit DM-12

(Photostat)

(See Opposite) ☞



DATE		AMOUNT
TOTAL OF INVOICES		
LESS ___% DISCOUNT		
LESS		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

PAID

No. 1010

PAY TO THE ORDER OF Fort Lee, N.J. Aug 20 1946

Rocket Sign Company $34.83 33/100

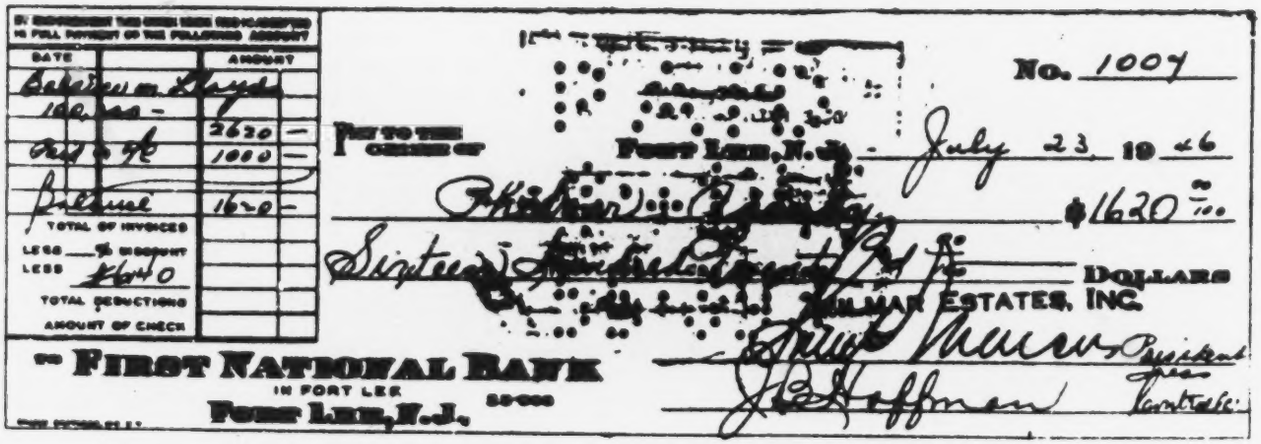
Thirty Four and 83/100 DOLLARS

MILMAR ESTATES, INC.

FIRST NATIONAL BANK IN FORT LEE Fort Lee, N.J. 55-300

Treasurer

J. S. Hoffman Controller



DATE		AMOUNT
Balance on Hand		
10-1-46		2620 —
Aug 9 46		1000 —
Balance		1620 —
TOTAL OF INVOICES		
LESS ___% DISCOUNT		
LESS Held O		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

No. 1007

PAY TO THE ORDER OF Fort Lee, N.J. July 23 1946

$1620 00/100

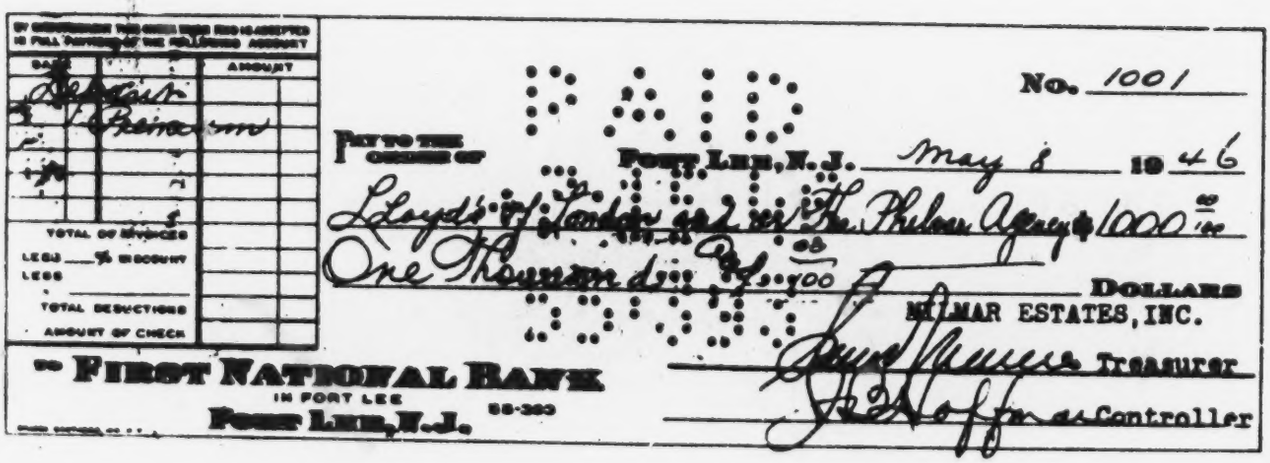
Sixteen Hundred Twenty and 00/100 DOLLARS

MILMAR ESTATES, INC.

Treasurer

J. S. Hoffman Controller

FIRST NATIONAL BANK IN FORT LEE Fort Lee, N.J. 55-300



DATE		AMOUNT
Balance		
7-1-46		
Balance		
TOTAL OF INVOICES		
LESS ___% DISCOUNT		
LESS		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

PAID

No. 1001

PAY TO THE ORDER OF Fort Lee, N.J. May 8 1946

Lloyd's of London c/o H. H. Phelan Agency $1000 00/100

One Thousand and 00/100 DOLLARS

MILMAR ESTATES, INC.

Treasurer

J. S. Hoffman as Controller

FIRST NATIONAL BANK IN FORT LEE Fort Lee, N.J. 55-300

EXHIBIT DM-12(Cont'd)

PART OF PHIL

039306

PAY TO THE ORDER OF
UNION TRUST COMPANY
OF MARYLAND
PHILVAR AGENCY

039305

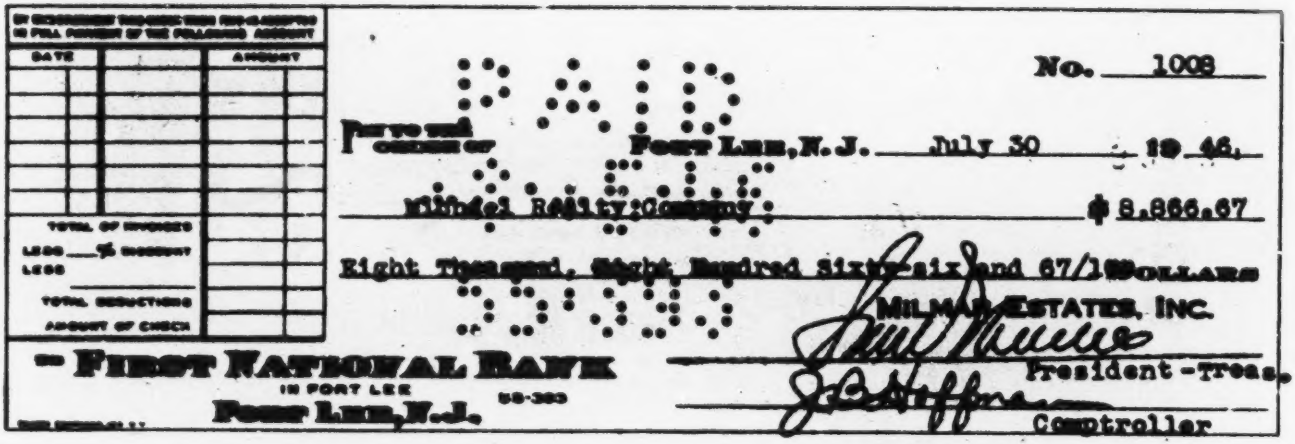
PART OF PHIL

PAY TO THE ORDER OF
UNION TRUST COMPANY
PHILVAR AGENCY

039304

PART OF PHIL

EXHIBIT DM-12(Cont'd)



DATE | AMOUNT

TOTAL OF INVOICES
LESS ___% DISCOUNT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

No. 1008

PAID

PAY TO THE ORDER OF Fort Lee, N.J. July 30 19 46.

Mitchel Realty Company $ 8,866.67

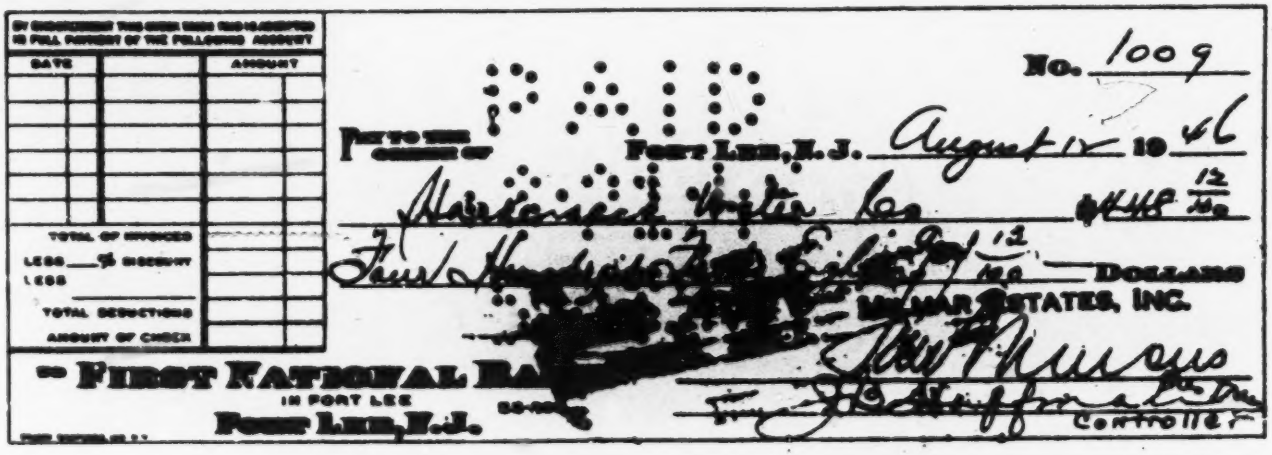
Eight Thousand, Eight Hundred Sixty-six and 67/100 DOLLARS

MILMAR ESTATES, INC.

President - Treas.

Comptroller

FIRST NATIONAL BANK
IN FORT LEE
Fort Lee, N.J.



DATE | AMOUNT

TOTAL OF INVOICES
LESS ___% DISCOUNT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

No. 1009

PAID

PAY TO THE ORDER OF Fort Lee, N.J. August 1x 19 46

Maintained Units Co $448 12/100

Four Hundred Forty-eight 12/100 DOLLARS

MILMAR ESTATES, INC.

President - Treas.

Controller

FIRST NATIONAL BA
IN FORT LEE
Fort Lee, N.J.

ENGLEWOOD

0393-

PART OF LOT 12.

0393-

PART OF LOT 12.

60-40

Rent for		
Mrs. Erskine		
October 5, 1947		

BILL MILLER'S RIVIERA, INC.
FORT LEE, N. J.

No. 6858

Fort Lee, N. J. October 10 1947

PAY TO THE ORDER OF Cash $20.00

Twenty and no/100 DOLLARS

PAYMENT STOPPED

BILL MILLER'S RIVIERA, INC.

FORT LEE TRUST COMPANY
55-546 FORT LEE, N. J. 55-546

Bill Miller

DOM 12

Mrs. Erskine Estate

Returned by FORT LEE TRUST CO., Fort Lee, N. J.

REASON CHECKED

Account attached	Not countersigned
Account closed	Not dated
Alteration	Not drawn on us
Amount - discrepancy	Not properly drawn
Amount - guarantee of	NOT SUFFICIENT FUNDS
Bank restricted	Payment stopped
Dated ahead	Raised
DO NOT SEND THROUGH AGAIN UNLESS CERTIFIED	Receipt to voucher not signed
Drawn against uncollected funds	Sent to us in error
Endorsement - not complete	Signature incomplete
Endorsement - not correct	Signature incorrect
Endorsement - not witnessed	Signature missing
Endorsement of Bank missing	Signature not authorized
Endorsement - guarantee of	Signature forged
Maker deceased	Witness to mark
NO ACCOUNT	SAVINGS ACCOUNT PASS BOOK MUST ACCOMPANY ORDER
No authority to pay	

No. _____ 10/22/47 19____

No. _____ 10/22/47 19____

WE CHARGE YOUR ACCOUNT FOR UNPAID ITEM DESCRIBED BELOW

☒ RETURNED HEREWITH ☐ REDEPOSITED, SUBJECT TO FINAL PAYMENT ☐ ENCLOSED FOR COLLECTION

MAKER	PAYABLE AT	REASON UNPAID	AMOUNT
Bill Miller's Riviera	Fort Lee Trust Co. Fort Lee, N.J.	payment stopped	2,000.00
		protest fee	2.52
		POSTAGE AND EXPENSE	.25
			2,002.77

Milmar Estates, Inc.
152 West 42nd Street
New York,18, New York

Prior Endorsements:

THE PUBLIC NATIONAL BANK AND TRUST COMPANY OF NEW YORK
Fifth Avenue OFFICE

FORM 2268 P.D.-329

No. 531

State of New Jersey
County of Bergen } ss.:

On the 20th day of October One Thousand Nine Hundred and 47 at the request of the FORT LEE TRUST COMPANY, I, J. U. ROSS Notary Public, duly commissioned and sworn, residing in the State of New Jersey, presented the original check, a copy hereunto annexed, made by Bill Miller's Riviera, Inc. dated October 10th 1947 payable after date to the order of Milmar Estates Inc. for $2000.00 at the FORT LEE TRUST COMPANY, and demanded payment thereof which was refused, they saying PAYMENT STOPPED Whereupon I, the said Notary, at the request of the aforesaid, did PROTEST, and by these presents do publicly and solemnly PROTEST against the Drawers and Endorsers of said check, and all others concerned, for all Costs, Charges, Damages, and Interest already incurred, and to be hereinafter incurred for want of payment of the same, and on the 20th day of October 19 47 I mailed at Fort Lee, N. J., notices of Protest for non-payment to the Endorsers of the said check, as directed as follows:

The Public Nat'l Bank & Trust Co. New York, New York
Milmar Estates Inc. C/O Public Nat'l Bank & Trust Co., New York, N.Y.
Federal Reserve Bank of New York, Fed. Reserve P.O. Station, N.Y. 45, N.Y.
Bill Miller's Riviera Inc. Hudson Terrace, Fort Lee, New Jersey

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Seal in the town of Fort Lee aforesaid.

J. U. ROSS, Notary Public.
My Commission Expires 12/28/48

(Seal)

EXHIBIT DM-12(Cont'd)

BILL MILLER'S RIVIERA, INC.
FORT LEE, N. J.

No. 6859

PAYMENT STOPPED

FORT LEE TRUST COMPANY
55-546 FORT LEE, N. J. 55-546

DOLLARS

BILL MILLER'S RIVIERA, INC.

Returned by FORT LEE TRUST CO., Fort Lee, N. J.

REASON CHECKED

Account attached	Not countersigned
Account closed	Not dated
Alteration	Not drawn on us
Amount - discrepancy	Not properly drawn
Amount - guarantee of	NOT SUFFICIENT FUNDS
Bank restricted	Payment stopped
Dated ahead	Recalled
DO NOT SEND THROUGH AGAIN UNLESS CERTIFIED	Receipt to voucher not signed
Drawn against uncollected items	Sent to us in error
Endorsement - not complete	Signature incomplete
Endorsement - not correct	Signature incorrect
Endorsement - not witnessed	Signature missing
Endorsement of Bank missing	Signature not authorized
Endorsement - guarantee of	Signature forged
Maker deceased	Witness to mark
NO ACCOUNT	SAVINGS ACCOUNT PASS BOOK MUST ACCOMPANY ORDER
No authority to pay	

No. _____ 10/22/47 19

WE CHARGE YOUR ACCOUNT FOR UNPAID ITEM DESCRIBED BELOW

No. _____ 10/22/47 19____

WE CHARGE YOUR ACCOUNT FOR UNPAID ITEM DESCRIBED BELOW

☒ RETURNED HEREWITH ☐ REDEPOSITED, SUBJECT TO FINAL PAYMENT ☐ ENTERED FOR COLLECTION

MAKER	PAYABLE AT	REASON UNPAID	AMOUNT
Bill Miller's Riviera	Fort Lee Trust Co. Fort Lee, N.J.	payment stopped	500.00
		protest fees	2.52
		POSTAGE AND EXPENSE	.25
			502.77

E 10-28-52
12/28/51

Milmar Estates, Inc.
152 West 42nd Street
New York 18, New York

Prior Endorsements:

THE PUBLIC NATIONAL BANK
AND TRUST COMPANY
OF NEW YORK
Fifth Avenue OFFICE

FORM 2368 P.D. 229

No. 532

State of New Jersey
County of Bergen } ss.:

On the 20th day of October One Thousand Nine Hundred and 47
at the request of the FORT LEE TRUST COMPANY, I, J. G. Ross, Notary Public, duly commissioned and sworn, residing in the State of New Jersey, presented the original check, hereunto annexed, made by Bill Millers' Riviera Inc. dated October 10th 19 47 payable after date to the order of Milmar Estates Inc. for $ 500.00 at the FORT LEE TRUST COMPANY, and demanded payment thereof which was refused, they saying PAYMENT STOPPED Whereupon I, the said Notary, at the request of the aforesaid, did PROTEST, and by these presents do publicly and solemnly PROTEST against the Drawers and Endorsers of said check, and all others concerned, for all Costs, Charges, Damages, and Interest already incurred, and to be hereinafter incurred for want of payment of the same, and on the 20th day of October 19 47 I mailed at Fort Lee, N. J., notices of Protest for non-payment to the Endorsers of the said check, directed as follows:

Public Nat'l Bank & Trust Co. New York, New York
Milmar Estates Inc./C/O Public Nat'l Bank & Trust Co. New York, N.Y.
Federal Reserve Bank of New York, Fed. Reserve P.O. Station, N.Y. 45, N.Y.
Bill Miller's Riviera Inc. Hudson Terrace, Fort Lee, New Jersey

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Seal in the town Fort Lee, aforesaid.

J. G. Ross, Notary Public.
My Commission Expires 12/28/48

EXHIBIT DM-12(Cont'd)

$6000.00/100 New York Dec 4 1947

On Jan 3, 1948 after date I promise to pay

to the order of Melman Seiler

Six Thousand PAYMENT STOPPED Dollars

Payable at Fort Lee N.J.

Value received under MILLERS RIVIERA INC

No. Due 1/5/48 Jack Miller Pres

PMNT OF PM 12 Jan 48

Melman Seiler
Jack Miller
Sam Brenner

Returned by FORT LEE TRUST CO., Fort Lee, N. J.

REASON CHECKED.

Account attached	Not countersigned
Account closed	Not dated
Alteration	Not drawn on us
Amount - discrepancy	Not properly drawn
Amount - guarantee of	NOT SUFFICIENT FUNDS
Bank restricted	Payment stopped
Dated ahead	Postdated
DO NOT SEND THROUGH AGAIN UNLESS CERTIFIED	Receipt to voucher not signed
Drawn against uncollected funds	Sent to us in error
Endorsement - not complete	Signature incomplete
Endorsement - not correct	Signature incorrect
Endorsement - not witnessed	Signature missing
Endorsement of Bank missing	Signature not authorized
Endorsement - guarantee of	Signature forged
Maker deceased	Witness to mark
NO ACCOUNT	SAVINGS ACCOUNT PASS BOOK MUST ACCOMPANY ORDER
No authority to pay	

No. 569

No. [illegible]

State of New Jersey
County of Bergen } ss.:

On the 5th day of January One Thousand Nine Hundred and 1948
at the request of the FORT LEE TRUST COMPANY, I, G. W. Brown Notary Public, duly commissioned and sworn, residing in the State of New Jersey, presented the original check, ~~note~~ hereunto annexed, made by Bill Miller's Riviera Inc. dated December 4th 19 47 payable after date to the order of Milmar Estate & Inc.
for $ 6,026.67 at the FORT LEE TRUST COMPANY, and demanded payment thereof which was refused, they saying PAYMENT STOPPED Whereupon I, the said Notary, at the request of the aforesaid, did PROTEST, and by these presents do publicly and solemnly PROTEST against the Drawers and Endorsers of said ~~check~~, note and all others concerned, for all Costs, Charges, Damages, and Interest already incurred, and to be hereinafter incurred for want of payment of the same, and on the 5th day of January 19 48 mailed at Fort Lee, N. J., notices of Protest for non-payment to the Endorsers of the said ~~check~~, note directed as follows:

Federal Reserve Bank of N. Y. Fed. Res. P. O. Stat., N. Y. 45., N. Y.
The Public Nat'l. Bank & Trust Co of N. Y., New York, N. Y.
Milmar Estate & Inc., c/o The Public Nat'l. Bk. & Trust Co., N. Y., N. Y.
Bill Miller's Riviera, Inc. Hudson Terrace, Fort Lee, N. J.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Seal in the [illegible] of Fort Lee, aforesaid.

G. W. Brown Notary Public.
My Commission Expires

(Seal)

PROTEST

Bill Miller's Riviera

FOR THE
FORT LEE TRUST COMPANY
FORT LEE, N. J.

January 5th 19 48.

6,026.67

Interest - - - - -

Fee - - - - - - 2.00

Postage - - - - -

TOTAL $ 6,028.67

G. W. Brown, Notary Public.

EXHIBIT DM-12(Cont'd)

Exhibit DM-13

WINNE & BANTA
Counselors at Law
210 Main Street
Hackensack, N. J.

April 5, 1946

CLOSING ADJUSTMENTS on Transfer of Property at Fort Lee, New Jersey

From MICHAEL REALTY COMPANY — Seller

To WILLIAM MILLER and SAMUEL MARCUS — Purchaser

Buyer's Credits		*Seller's Credits*	
Paid on signing contract and closing in cash	$125,000.00	Purchase Price	$425,000.00
Purchase Money Mortgage	300,000.00	Plate glass insurance	470.00
		Boiler machine	26.57
		Seller's Total Credits	425,496.57
Buyer's Total Credits	425,000.00	Buyer's Total Credits	425,000.00
		Balance to Seller —	496.57

Exhibit DM-25

(Photostat)

(See Opposite) 7

Sept 14/48 P45.

Deed from Sam Manera note dated June 1/47 for $30.00 - payable to Sam Manera made by Wellen Miller payable at Bill Miller Manera - Thunderbay, Ont. for $.

which note I am to hold in escrow as per agreement made Sept. 14/48

EXHIBIT DM-25

E.P-45-Sept
12-26-51
M.M

Exhibit DM-27

(Photostat)

(See Opposite) ☞

Hotel Charlotte *A Bland Hotel*

CHARLOTTE, NORTH CAROLINA

9/12/48

Dear Bill

THIS LETTER WILL AUTHORIZE YOU TO SIGN MY NAME TO ALL PAPERS FOR SALE OF MEMBER STOCK TO ME.

Al Bierman

Left Morris Ex. #302 - 2d.

Exhibit DM 27

Exhibit DM-28

(Photostat)

(See Opposite)

EXHIBIT DM-28

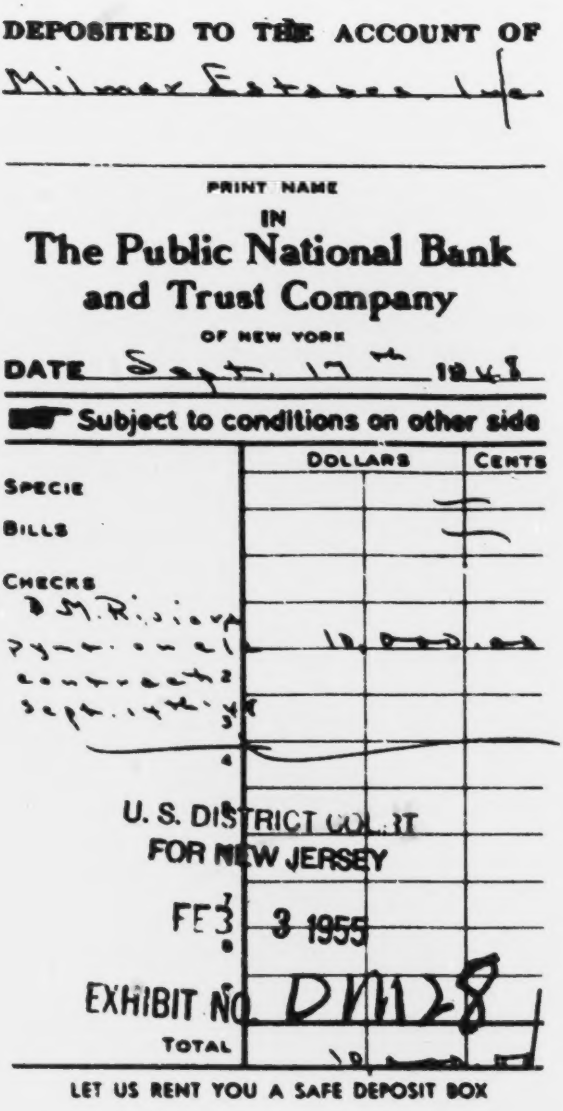
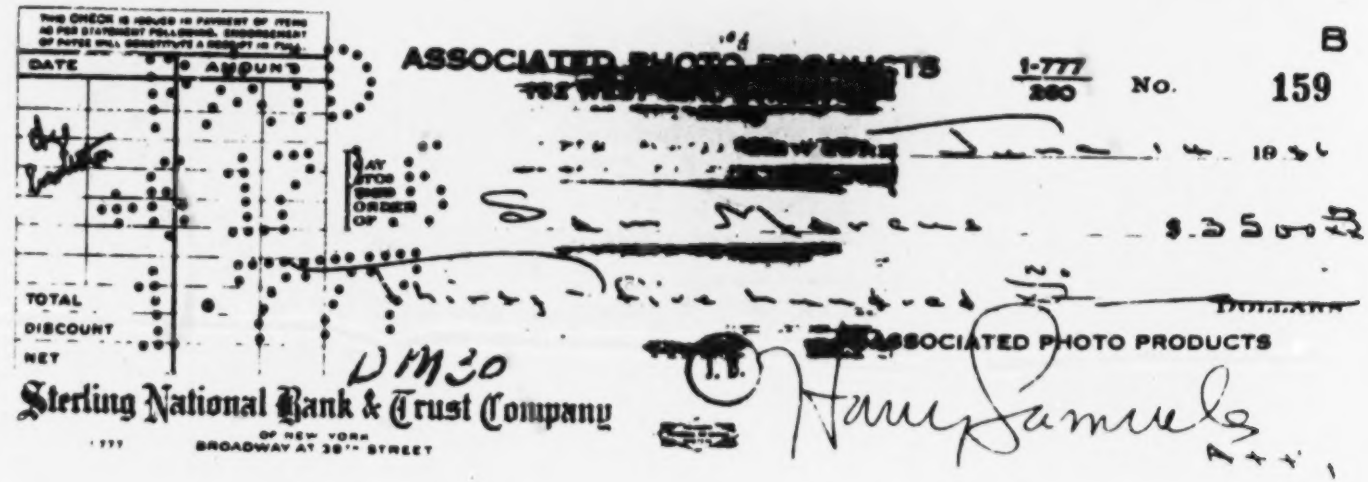


Exhibit DM-30

(Photostat)

(See Opposite) ☞



B

ASSOCIATED PHOTO PRODUCTS

1-777 / 280

No. 159

DATE | AMOUNT

PAY TO THE ORDER OF

TOTAL

DISCOUNT

NET

DOLLARS

ASSOCIATED PHOTO PRODUCTS

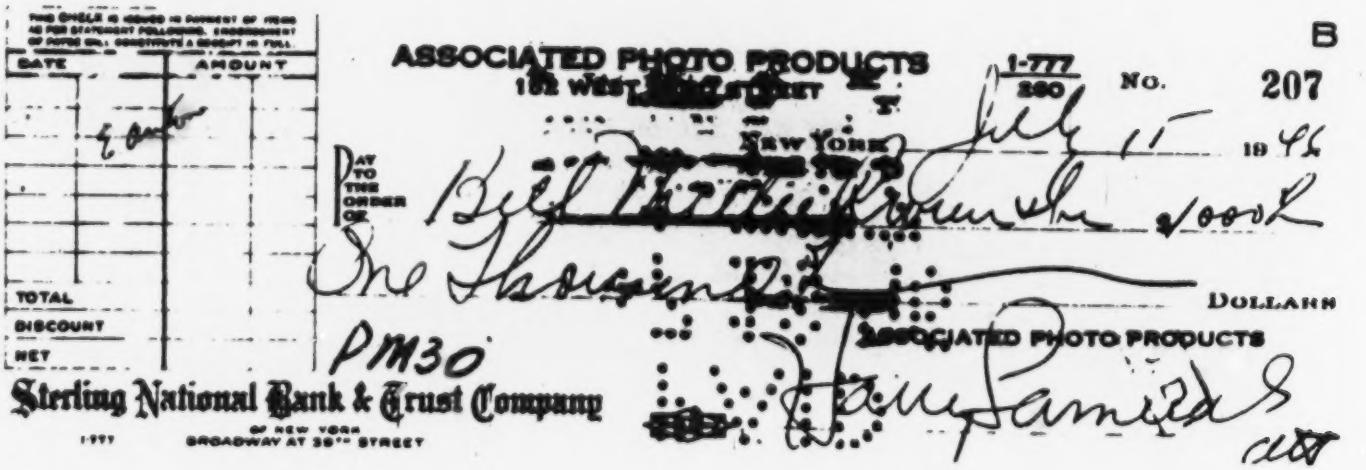
PM30

Sterling National Bank & Trust Company

OF NEW YORK

BROADWAY AT 38TH STREET

1777



B

ASSOCIATED PHOTO PRODUCTS

1-777 / 280

No. 207

DATE | AMOUNT

PAY TO THE ORDER OF

TOTAL

DISCOUNT

NET

DOLLARS

ASSOCIATED PHOTO PRODUCTS

PM30

Sterling National Bank & Trust Company

OF NEW YORK

BROADWAY AT 38TH STREET

1777

EXHIBIT DM-30

Exhibit DM-31

(Photostat)

(See Opposite)

EXHIBIT DM-31

IMPERIAL SIGNS CORPORATION

1545 INWOOD AVE. (BRONX) NEW YORK 52, N. Y. · TREMONT 8-7700

STRUCTURAL SIGNS & MARQUEES
COLD CATHODE LIGHTING
NEON SIGNS
LUCITE & PLEXIGLASS FLUORESCENT DISPLAYS

April 23, 1946

Bill Miller's Riviera Inc.
Fort Lee
New Jersey

Att: Mr. Samuel Marcus

Dear Sir:

This will acknowledge with thanks receipt of your order to remodel and supply the following sign work.

Furnish and install 6' metal letters reading OPENS MAY 25 illuminate them with your reflectors, we to furnish all other electrical equipment. Price for the above is $700.00.

Change 2 sets of channel neon letters now reading "Ben Hardens" to BILL MILLER'S. Repair whatever letters necessary reading RIVIERA and install whatever neon necessary so that they will function properly when completed. All of the letters to receive 2 coats of paint.

Repair where necessary the roof structures, red lead them, then finish in black.

Repaint a small bulletin copy to be BILL MILLER'S RIVIERA with ARROW copy inside JUST AHEAD. Also repair the reflectors thereon.

Furnish and install 4 oilcloth signs.

Agreed price for the above is $1500.00.

Please have copy signed where marked "Accepted" by proper officer of your corporation and also you sign where personal guarantee clause appears.

Very truly yours,

IMPERIAL SIGNS CORP.

By S. Blank

ACCEPTED:
Bill Miller's Riviera
By
I herewith guarantee payment of above account
By

IMPERIAL SIGNS CORPORATION

1565 [illegible] Ave., ([illegible]) NEW YORK 52, N. Y. • TREMONT 8-1700

Bill Miller's Riviera Inc.
Fort Lee
New Jersey

No 1000

Att'n: Mr. Samuel Marcus

OUR ORDER NO.

DATE	YOUR ORDER NO.	SHIPPED VIA	TERMS	REPRESENTATIVE
4-25-46			NET F. O. B. N. Y.	

QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION	PRICE	TOTAL
		Furnishing and installing 6' galvanized sheet steel temporary letters reading OPENS MAY 23	700.00	
				700.00

Paid 4/30/46
[illegible]

DM31

EXHIBIT DM-31(Cont'd)

STUYVESANT BUILDERS

GENERAL CONTRACTORS

STUYVESANT 9-1497

51 EAST 10TH STREET
NEW YORK, N. Y.

December 10th, 1946

[redacted]

To Bill Miller's RIVIERA

Fort Lee, New Jersey

Re: Work completed at premises of Riviera and as previously billed.				
Balance due of bill dated May 30th, 1946.....	$ 970	88	$ 970	88

DM 31

EXHIBIT DM-31(Cont'd)

IMPERIAL SIGNS CORPORATION

[redacted] AVE., ([redacted]) NEW YORK 52, N. Y. • TREMONT [redacted]

Bill Miller's Riviera Inc.
Fort Lee
New Jersey

№ 1010

Att: Mr. Samuel Meyers

OUR ORDER NO.

DATE	YOUR ORDER NO	SHIPPED VIA	TERMS		REPRESENTATIVE
5/24/46			NET:	F.O.B. N.Y.	

QUANTITY ORDERED	QUANTITY SHIPPED	DESCRIPTION	PRICE	TOTAL
		Change 2 sets of channel neon letters reading BEN MARDEN'S to BILL MILLER'S. Repaired letters reading RIVIERA and installed necessary neon in same. Painted sign with 2 coats of paint.		
		Repaired roof structure red lead and painted black. Repainted small bulletin, copy BILL MILLER'S RIVIERA with arrow, copy inside JUST AHEAD, and repaired reflectors.		
		Furnished and installed 4 oilcloth signs. AS AGREED	4500.00	
		1% C.S.T.	45.00	
			4545.00	
		Received On Acct.	2000.00	
				2545.00

DM31

EXHIBIT DM-31(Cont'd)

INDUSTRIAL
BANK OF COMMERCE

NEW YORK _____ 19__ 1-750 280

PAY TO THE ORDER OF _____ $400 Z

Four Hundred _____ DOLLARS

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

NO. DM31

_____

NEW YORK _____ 19 _____ No. _____

CORN EXCHANGE BANK TRUST COMPANY J-25

181ST STREET BRANCH

PAY TO THE ORDER OF Dr Spencer Sign Co $100 Z

One hundred _____ Dollars

final payment
for Repairs DM31

181 ST. & ST. NICHOLAS AVE.

NEW YORK _____ 19 _____ No. _____

CORN EXCHANGE BANK TRUST COMPANY H-26

PENNSYLVANIA STATION BRANCH

PAY TO THE ORDER OF Dr Spencer Sign Co $919 92 Z

_____ Dollars

DM31 _____

SEVENTH AVE. & 33RD STREET

EXHIBIT DM-31 (Cont'd)

Imperial Lyon Co.

Endorsed Legal
Grant

Pd in full to date
Legal
Grant

EXHIBIT DM-31 (Cont'd)

NO RECEIPT REQUIRED
RETURN IF NOT CORRECT
THIS CHECK PAYS IN FULL THE FOLLOWING ITEMS

DATE	AMOUNT	DISCOUNT & ALLOWANCE	NET

FOTOSHOP
136 WEST 22ND STREET

No 1951

NEW YORK May 17, 1946

PAY TO THE ORDER OF Imperial Sign Corp. $4000 [illegible]

Four Thousand [illegible] Dollars

TO CORN EXCHANGE BANK TRUST COMPANY
181ST STREET BRANCH J-25
NEW YORK

DM31

THIS CHECK IS ISSUED IN PAYMENT OF ITEMS AS PER STATEMENT FOLLOWING. ENDORSEMENT OF PAYEE WILL CONSTITUTE A RECEIPT IN FULL.

DATE	AMOUNT	
TOTAL		
DISCOUNT		
NET		

42ND ST. FOTOSHOP, INC.
18 EAST 42ND STREET

No. 10801

NEW YORK June 7 1946

PAY TO THE ORDER OF Imperial Sign Corp $1000 00/100

One Thousand 00/100 DOLLARS

42ND ST. FOTOSHOP, INC.

PRES.

DM31

Sterling National Bank & Trust Company
OF NEW YORK
BROADWAY AT 50TH STREET

Endorsement Sign Here

Bank

Endorsement signs here

EXHIBIT DM-31(Cont'd)

Fotoshop Inc.

Two Great Stores
In the Heart of New York

18 EAST 42nd STREET, NEW YORK 17, N. Y.
(East of 5th Avenue)
Phone: VAnderbilt 6-2900

other . . . FOTOSHOP
130 WEST 32nd STREET

July 2. 1946

Received $ [illegible] on account

Bill Miller's Riviera Inc.

Imperial Sign Co.

Frank

Exhibit DM-34

(Photostat)

(See Opposite) ☞

Check Drawn

U.S. DISTRICT COURT
FOR NEW JERSEY

15 [illegible]

EXHIBIT NO. D1134.

1/4/47	3000	to Rec. Loan				
	3500	from: Rec Loan				
	3444.19	Merchant Bank				
	1000 -	Modern Bank Rec Loan				
	16.75	Int. -				
	3433.33	Merchant Bank				
	1000 -	Modern Bank				
	1000 -	from Rec Loan				
	7760	Lastanza				
	16.75 ✓	"				
	71.87 ✓	Modern Bank				
	3401.33 ✓	Merchant				
	16.75 ✓	Lastanza				
	3400 -	Merchant				
	2210.87 ✓	Phila Comm Bank				
	85.75 ✓	N.J. State Treasurer				
	3000.- ✓	from Rec Loan				
	500.- ✓	Jack Hoff				
	891.67 ✓	Merchant				
	16.75 ✓	Lastanza				
	45.-	Modern Bank				
	3500 - ✓	from - [illegible]				
	140.40	I.H., Treasurer				

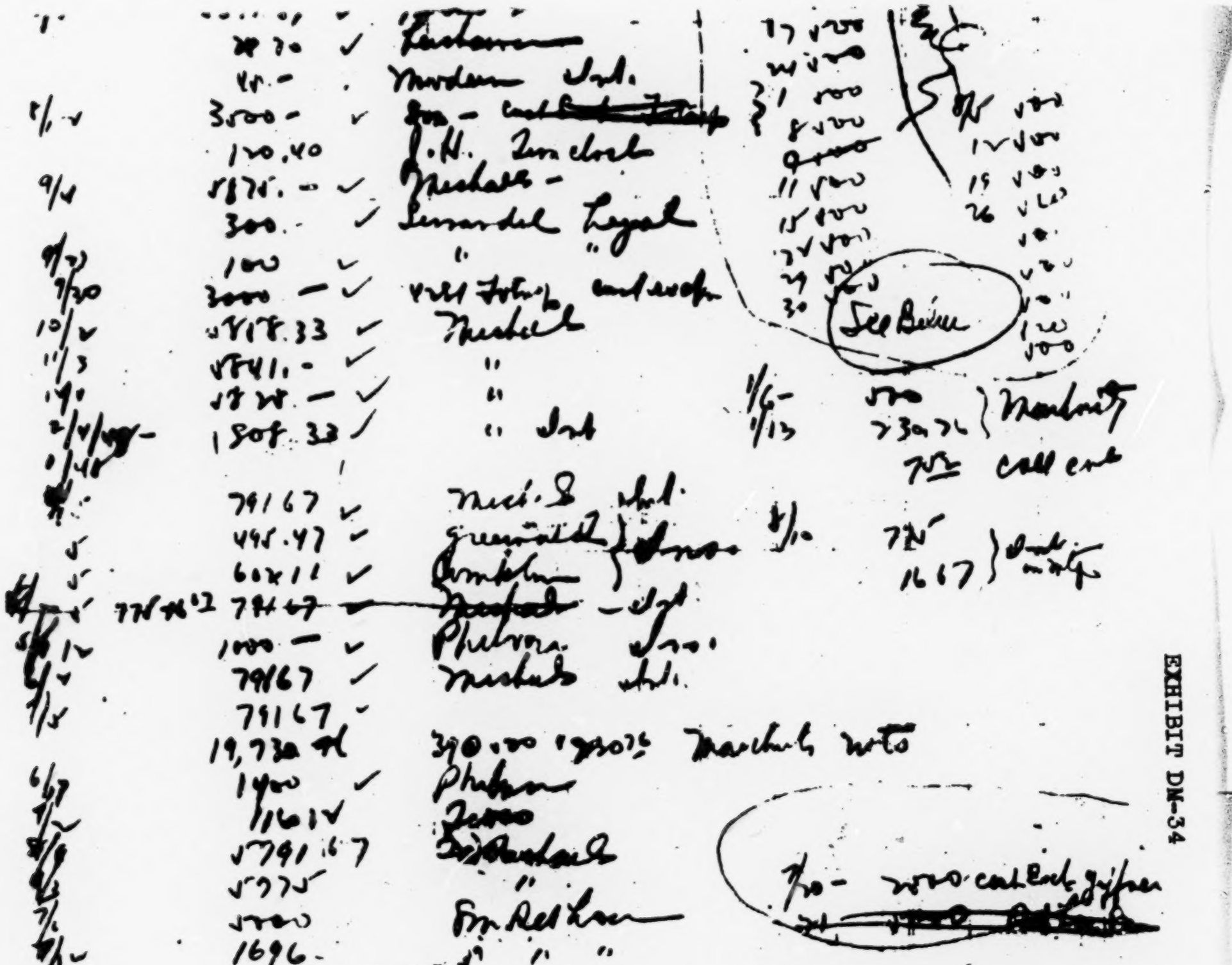


EXHIBIT DM-34

Exhibit DM-35

(Photostat)

(See Opposite) ☞

THE PUBLIC NATIONAL BANK
AND TRUST COMPANY
OF NEW YORK

[redacted] ESTATE, INC.
192 WEST 42ND STREET
NEW YORK 18, N.Y.

R R

DATE	DEBITS	DATE	DEPOSITS
	BALANCE FORWARD ☞	OCT 1 48	4453
TIEX	4453-		

TOTAL NUMBER OF VOUCHERS ( ) BALANCE $

C-SERVICE CHARGE
EX-EXCHANGES
EC-ERROR CORRECTED
CM-CREDIT MEMO
RT-RETURNED ITEM
CC-CERTIFIED CHECK
DM-DEBIT MEMO

(IF YOUR ADDRESS IS INCORRECT PLEASE ADVISE US

☞ All items and this account are subject to conditions on reverse side

EXHIBIT DM-36

Exhibit DM-41

(Photostat)

(See Opposite) ☞

AGREEMENT made this 15th day of January, 1948, by and between FACTORY SURPLUS MERCHANDISE INC., a New York corporation having its principal place of business at 152 West 42nd Street, Borough of Manhattan, City of New York, (hereinafter referred to as the "corporation",) and LOUIS DAVIS, residing at 120 West 57th Street, Borough of Manhattan, City of New York, (hereinafter referred to as "Davis.")

W I T N E S S E T H

WHEREAS, the Corporation desires to obtain financing for the purpose of conducting its business, and

WHEREAS, Davis is willing to aid the Corporation in such financing,

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar, each to the other in hand this day paid, receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants hereinafter contained it is agreed as follows:

FIRST: Davis agrees to advance to the Corporation the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars, less charges as hereinafter provided.

SECOND: The Corporation agrees to repay the said

One ($1.00) Dollar, each to the other in hand this day paid, receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants hereinafter contained it is agreed as follows:

FIRST: Davis agrees to advance to the Corporation the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars, less charges as hereinafter provided.

SECOND: The Corporation agrees to repay the said sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars, in two (2) installments each in the sum of Three Thousand Three Hundred Seventy-five ($3,375.00) Dollars due on May 15th, 1948 and June 15th, 1948 respectively, as evidenced by a series of two (2) promissory notes dated this date. It is understood and agreed that said notes shall contain an acceleration clause providing that in the event the Corporation fails to make any one of the aforementioned payments for a period of ~~five~~ ten (10) days, then at the option of Davis, the entire unpaid balance shall

DM - 41 —

immediately become due and payable.

THIRD: The corporation agrees to pay all charges in connection with this financing amounting to the sum of Seven Hundred Fifty Dollars, plus the attorney's fees in the amount of Seventy-five ($75.00) Dollars.

FOURTH: It is understood and agreed that the corporation will deliver to Davis a deed transferring the title to property located at 12 Duane Street, Borough of Manhattan, City of New York, which the corporation now owns in fee, which deed shall be held in escrow by Meyer Tobias, Attorney for Davis, with offices at 551 Fifth Avenue, Suite 522, Borough of Manhattan, City of New York, pending the payment of the monies due herein. In the event of payment of said monies, then the deed shall be returned to the corporation. In the event that the corporation shall default in the payments to be made as herein stipulated, then the said Meyer Tobias shall deliver said deed to Davis. The said Meyer Tobias, escrowee, upon delivery of the deed either to the corporation or to Davis as herein provided, shall be deemed released from any further responsibilities pursuant to this escrow agreement.

FIFTH: It is agreed that in the event the

of said monies, then the deed shall be returned to the corporation. In the event that the corporation shall default in the payments to be made as herein stipulated, then the said Meyer Tobias shall deliver said deed to Davis. The said Meyer Tobias, escrowee, upon delivery of the deed either to the corporation or to Davis as herein provided, shall be deemed released from any further responsibilities pursuant to this escrow agreement.

FIFTH: It is agreed that in the event the Corporation shall sell its business or in the event there shall be a transfer of present ownership of the stock of the Corporation by the present stockholders, then at the option of Davis, the entire unpaid balance of the notes shall immediately become due and payable. This clause shall not apply or be of any effect, if Marcus remains financially interested in the new corporation.

SIXTH: It is agreed that in the event the Corporation is levied upon or a judgment remains unpaid for ten (10) days pursuant to a judgment or lien or in the

DM-41-2

event that the Corporation becomes insolvent, files a petition in the Federal Court under a Chapter of the Bankruptcy Acts, whether voluntary or involuntary, or makes an assignment for the benefit of creditors or makes an act or takes any steps which will make the Corporation insolvent, then at the option of Davis, the entire unpaid balance shall immediately become due and payable.

It is agreed that in the event Davis is compelled to retain an attorney for the purpose of enforcing payment of the moneys due Davis, the Corporation hereby agrees to pay Davis' attorney his reasonable counsel fees in the amount of fifteen (15%) per cent of the unpaid balance, for services to be rendered by him in enforcing payment due Davis from the Corporation, provided such attorney brings suit. It is agreed that in the event of a sale of any of the assets of the Corporation, that the Corporation agrees to pay any deficiency that may result and in the event there shall be a surplus over and above the amount due Davis plus counsel fees plus expenses shall be paid to the Corporation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and caused these

the amount due Davis plus counsel fees plus expenses shall be paid to the Corporation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and caused these presents to be signed by its duly authorized officers to sign and execute this agreement and affix its seal the day and year first above written.

FACTORY SURPLUS MERCHANDISE INC.

By: _____
PRESIDENT

ATTESTED BY:

_____

_____ L.S.

STATE OF NEW YORK }
CITY OF NEW YORK } ss:
COUNTY OF NEW YORK }

On this 15th day of January, 1948, before me came

SAM MARCUS, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the President of FACTORY SURPLUS MERCHANDISE INC., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal;—that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

DM-41-3

CORPORATE RESOLUTION

WE, ~~[illegible]~~ and HARRY SAMUELS President and Secretary respectively of FACTORY SURPLUS MERCHANDISE INC., a New York Corporation having its principal place of business at 152 West 42nd Street, Borough of Manhattan, City of New York, do hereby certify that at the joint meeting of the stockholders and Board of Directors of said corporation, duly held on the 14th day of January, 1948, adopted the following:

WHEREAS, the Corporation is in need of financing and

WHEREAS, Louis Davis has indicated his willingness to advance sums of money to the corporation, now be it

RESOLVED, that ~~[illegible]~~RCUS, the president of the corporation, be and he is hereby authorized and empowered to borrow the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars from Louis Davis and to issue or execute its corporate notes in the amount of Six Thousand ~~Seven Hundred~~ Fifty ($6,750.00) Dollars, bearing ~~interest at the rate of six (6%) per cent per annum, and~~ execute and delive to Davis a deed to certain real property located at 15 Duane Street, Borough of Manhattan, City of

WHEREAS, Louis Davis has indicated his willingness to advance sums of money to the corporation, now be it

RESOLVED, that ~~EMANUEL~~ Emanuel, the president of the corporation, be and he is hereby authorized and empowered to borrow the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars from Louis Davis and to issue or execute its corporate notes in the amount of Six Thousand ~~Seven Hundred~~ Fifty ($6,750.00) Dollars, bearing ~~interest at the rate of six (6%) per cent per annum, and~~ execute and deliver to Davis a deed to certain real property located at 13 Duane Street, Borough of Manhattan, City of New York, and to pay all other charges in connection with obtaining said financing, and it is

FURTHER RESOLVED, that the President of the corporation is hereby authorized and empowered to execute such other instruments as may be required or deemed necessary in connection with said financing.

WE do certify that said resolution is not in conflict with and is permissible under the Charter and By-Laws of the corporation and we individually guarantee that

DM-41-4

the Corporation duly adopted said resolution.

President

Secretary

Individually

Individually

STATE OF NEW YORK
CITY OF NEW YORK } ss:
COUNTY OF NEW YORK

[redacted] and HARRY SAMUELS, being severally sworn, each for himself, deposes and says: That he said Corporation is President and that he HARRY SAMUELS is Secretary of FACTORY SURPLUS MERCHANDISE INC. That they have read the foregoing resolution and each knows the contents thereof; that such resolution was duly adopted at a joint meeting of the Stockholder and Board of Directors on January 14th, 1946; and that each makes this affidavit knowing fully that Louis Davis parts with a substantial sum of money relying thereon.

Sworn to before me, this
15th day of January, 1946.

DM-41-5

Louis Davis
120 West 57th Street
New York City

Dear Sir:

FIRST: For the purpose of inducing you and in consideration of your advancing to FACTORY SURPLUS MERCHANDISE INC. the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars in cash for which the said corporation is issuing and executing its series of two (2) promissory notes, each dated January 15th, 1948, and due March 15th, 1948 and June 15th, 1948 respectively, each note bearing interest at the rate of six (6%) per cent per annum, I hereby agree to bind myself as follows:

(a) I, SAM MARCUS, represent that I am President and stockholder of FACTORY SURPLUS MERCHANDISE INC.

(b) I, SAM MARCUS, hereby agree to endorse the notes issued and executed by the said corporation to you which notes total the sum of Six Thousand Seven Hundred Fifty ($6,750.00) Dollars.

(c) I, SAM MARCUS, hereby agree to deliver and deposit with you as collateral security for the payment of the aforementioned series of corporate promissory notes

(1) a chattel mortgage duly executed by the East 57th Street Amusement Corp. of 149 East 57th Street, Borough of Manhattan, City of New York, to Samuel Marcus in the amount of Forty-seven Thousand Eight Hundred Twenty-eight and 95/100 ($47,828.95) Dollars, covering certain fixtures and chattels located in the restaurant known as the Embassy, at 151 East 51st Street, Borough of Manhattan, City, County and State of New York, executed to my order as mortgagee, together with the series of notes which it secures.

(2) An assignment of said mortgage to be made to your order to be made by the undersigned as mortgagee.

(d) You are to hold the securities described in Paragraph "c", as hereinafter provided in Paragraph "First" above, after which you shall return such securities to the persons in whose name they appear.

(e) In the event of any default in the

(c) I, SAM MARCUS, hereby agree to deliver and deposit with you as collateral security for the payment of the aforementioned series of corporate promissory notes

(1) a chattel mortgage duly executed by the East 57th Street Amusement Corp. of 149 East 57th Street, Borough of Manhattan, City of New York, to Samuel Marcus in the amount of Forty-seven Thousand Eight Hundred Twenty-eight and 95/100 ($47,828.95) Dollars, covering certain fixtures and chattels located in the restaurant known as the Embassy, at 151 East 51st Street, Borough of Manhattan, City, County and State of New York, executed to my order as mortgagee, together with the series of notes which it secures.

(2) An assignment of said mortgage to be made to your order to be made by the undersigned as mortgagee.

(d) You are to hold the securities described in Paragraph "c", as hereinafter provided in Paragraph "First" above, after which you shall return such securities to the persons in whose name they appear.

(e) In the event of any default in the payment of any of the aforementioned notes described in Paragraph "First" above, you shall have the right to pursue each and every remedy which you may be allowed under law. However, such remedies shall be cumulative and not alternative.

(f) In the event that you are compelled to employ an attorney for the purpose of enforcing payment of the monies, I hereby agree to pay his reasonable counsel fees in the amount of fifteen (15%) per cent of the unpaid balance.

DM-41-6

SECOND: I hereby consent to any extension of time or any other arrangements that you may make with the FACTORY SURPLUS MERCHANDISE INC. in respect to the payment of said notes and any such arrangement shall be deemed binding upon me and I shall not be deemed released.

THIRD: It is understood and agreed that my endorsement on the notes issued by the FACTORY SURPLUS MERCHANDISE INC. shall be deemed as a surety and that you shall have the right to proceed against me for the enforcement of the indebtedness hereinabove mentioned in the same manner as if I were the principal and without first attempting to collect or against the corporation.

FOURTH: In the event you receive any payments on the chattel mortgage covering the fixtures in the Embassy Restaurant, such payment shall be paid over to the undersigned except in the event of a default, then all such payments shall be applied on the amount due you.

Kindly indicate your assent by endorsement below.

Very truly yours,

AGREED:

STATE OF NEW YORK)
CITY OF NEW YORK) SS:
COUNTY OF NEW YORK)

On this 5th day of January, 1943, before me came TOM MARCUS, to me known and known to me to be the individual described in, and who executed the foregoing instrument and he acknowledged to me that he executed the same.

DM-41-7

Exhibit DM-43

(Photostat)

(See Opposite) ☞

EXHIBIT NO. DM43

		TOTAL	RIVIERA	3 RIVERS
1946	May	10000	10000	
	June			
	July	108667	108667 98667	10000
	August	500	500	
	September	3500	3500	
	October	7000		7000
	November	700	700	100
	December	12100		12100
1947	January	344419		344419
	February	343333		343333
	March			

	November	700	[illegible]	700
	December	12100		12100
947	January	344419		344419
	February	343333		343333
	March			
	April	3500	3500	
	May	5100	3500	
			1600	
	April 1, 1947	[illegible]	4000	
	TOTAL	6[illegible]19	3816667	[illegible]

EXHIBIT DM-43

1946 Union Aggr. 14th Inn Settlement Co.

Dr

$21,800

1/14/47 - 7868.33 - (Loan to Lynn)

1/22 ✓3000 - (Rel Loan from Rose)

1/22 ✓3500 (Rose) Repl

1/c ✓700 (Rose) —

1/28 ✓17267.33 " — ✓

27 ✓3000 - " ✓

3/1 1100 - " — ✓

7/11 - ✓1500 (500) (Loan - a/c Mark 1000 due on January 1st)

5/8 1000 Bza

4/29 ✓1000 Sow

5/11 1000

5/26 1000

27 2000 - Cash

6/3 ✓4000

11 ✓4000

14 ✓4000

7/6/20 ✓3000 (Rose) Repl

7/7 ✓500

8/15 ✓3500 Repl

8/14 - ✓2500 ✓

22 ✓2500 ✓

9/5 ✓3000 Bza

9/5 ✓1000 Rose

9/8 ✓2600 (100) Repl

12 ✓2042.23

23 ✓2500. —

9/30 ✓4000 (1500 Rendl

10/7 ✓2500 —

11/10/20 ✓ - ✓3500 Rep

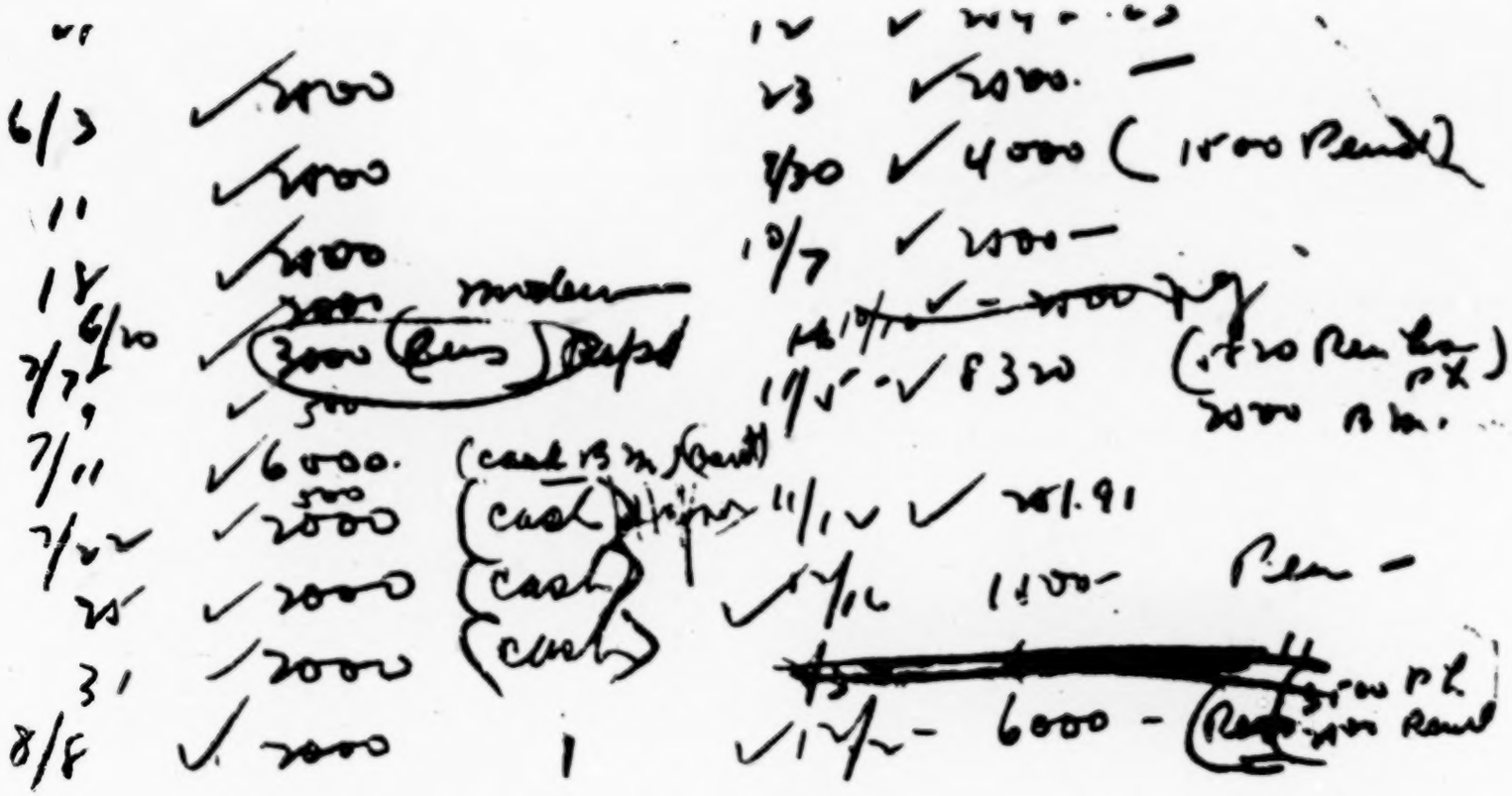
11/1 - ✓8320 (1320 Rec Loan pd)

2500 Bza.

U.S. DISTRICT COURT
FOR NEW JERSEY

DEC 17 1955

EXHIBIT NO DM48



4/1	Greenwald	491.47		11 v 6 v
1/1	Conklin	602.11		
5/1	Mucher	~~791.67~~	9/20	10,000
		791 67	9/21)	note b.p.y. (1000)
5/1	Phelan	1000 —		
6/1		791.67		
6/7	Phelan	1400 —		
7/	Stat. & N.J	116 v		
7/	Mucher	791 67		
7/	S.M.	169. —		
	1/c. 508.33			
	3/1 791 67			
7/20	(cash each 2 vs)			
7/20	SM - Bu Mercantile note		1/1	2000 — 500 Dept
8/3	Mucher -	791,67		
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EXHIBIT DM-48

Exhibit DM-48

(Photostat)

(See Opposite)

Exhibit DM-63

(Photostat)

(See Opposite) 25

EXHIBIT DM-63

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

1948

For calendar year 1948 or fiscal year beginning ....., 1948, and ending ....., 1949

Do not write in these spaces
File Code
Serial No.
(Cashier's Stamp)

DUPLICATE

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than $5,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than $100 of other wages, dividends, and interest.

Name SAMUEL MARCUS
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 685 West End Avenue
(PLEASE PRINT. Street and number or rural route)

New York (City, town, or post office) 25 (Postal zone number) New York (State)

Occupation Corp. Officer Social Security No. 119-22-6577

Your exemptions

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instructions) with 1948 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year— 65 OR OVER	BLIND	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.
Your name Samuel Marcus	Yes ☐ No ☒	Yes ☐ No ☒	a. Number of exemptions for you 1
Wife's (or husband's name)	Yes ☐ No ☐	Yes ☐ No ☐	b. Number of her (his) exemptions

Name of Other Dependent Relative	Relationship	Address—If different from yours

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 1

Your income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
Fotoshop, Inc.	New York, N. Y.	$ 901 70	$ 6,800 00
42nd Street Fotoshop, Inc.	New York, N. Y.	1,125 70	8,400 00
	Enter totals	$ 2,027 40	$ 15,200 00

3. Enter here the total amount of your dividends .....
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) .....
5. If you received any other income, give details on page 2 and enter the total here 25,700 00
6. Add items entered in items 2, 3, 4, and 5, and enter the total here ..... $ [illegible]

Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) → 1

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
Fotoshop, Inc.	New York, N. Y.	$ 901 70	$ 6,800 00
42nd Street Fotoshop, Inc.	New York, N. Y.	1,125 70	8,400 00
	Enter totals...	$ 2,027 40	$ 15,200 00

3. Enter here the total amount of your dividends 25,700 00
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) .....
5. If you received any other income, give details on page 2 and enter the total here ..... $ 40,900 00
6. Add income shown in items 2, 3, 4, and 5, and enter the total here .....

How to figure your tax

IF YOUR INCOME WAS LESS THAN $5,000. - You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE. — Disregard the tax table and compute your tax on page 3. You may either take a standard deduction or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE. - To obtain benefits of split-income provisions, husband and wife must file a joint return. If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax due or refund

7. Enter your tax from table on page 4, or from line 18, page 3 ..... $ None
8. How much have you paid on your 1948 income tax?
   (A) Total tax in item 2, above (attach Original Forms W-2) ..... $ 2,027 40
   (B) By payments on 1948 Declaration of Estimated Tax .....
   Enter total here → 2,027 40
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here ..... $
   This balance of tax due must be paid in full with return.
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here. $ 2,027 40
    (Indicate whether you want this overpayment: Refunded to you [X]; or Credited on your 1949 estimated tax [ ])

If you filed a return for a prior year, what was the latest year? 1947
To which Collector's office was it sent? 3rd, New York
To which Collector's office did you pay amount claimed in item 8 (B), above?

Is your wife (or husband) making a separate return for 1948? NOR (Yes or No)
If "Yes," write her (or his) name here ▸ Sarah Marcus
Collector's office to which [illegible] was sent ▸ New York

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

[illegible] & Co. and/or information furnished

(Signature of person, other than taxpayer, preparing this return) (Date)

(Name of firm or employer, if any)

APR 26 1949

(Signature of taxpayer) (Date)

EXHIBIT NO. DM-63

(Signature of husband or wife, if husband and wife file a joint return) (Date)

▸ To assure any benefits of split-income provisions, husband and wife must include all their income, and BOTH MUST SIGN, even though only one has income.

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)		4. Total amount received this year	
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of cost (line 1 less line 2)		6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4)	

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (itemize in Schedule G)	
136 W. 32nd St. (3/1/48-12/31/48)	$ 19,123 56	$ 644 72	$	$ 15,866 39	
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$ 19,123 56	$ 644 72	$	$ 15,866 39	2,612 45

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business Retail Photogr.Suppl. (2) business name Fotoshop

(3) business address 136 West 32nd Street, N.Y.C.

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts			$ 115840 02	
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)		OTHER BUSINESS DEDUCTIONS		
2. Inventory at beginning of year	$ 67721 37	11. Salaries and wages not in line 4	$ 18244 48	
3. Merchandise bought for sale	87918 94	12. Interest on business indebtedness	89 75	
4. Labor		13. Taxes on business and business property	850 56	
5. Material and supplies		14. Losses (explain in Schedule G)		
6. Other costs (explain in Schedule G)		15. Bad debts arising from sales or services		
7. Total of lines 2 to 6	155640 31	16. Depreciation, obsolescence, and depletion (explain in Schedule F)	669 56	
8. Less inventory at end of year	77947 51	17. Rent, repairs, and other expenses (explain in Schedule G)	10442 70	
9. Net cost of goods sold (line 7 less line 8)	$ 77692 80	18. Amortization of emergency facilities (attach statement)		
		19. Net operating loss deduction (attach statement)		
		20. Total of lines 11 to 19	$ 30297 05	
		21. Total of lines 9 and 20	$ 107989 85	
10. Gross profit (line 1 less line 9)	$ 38147 22	22. Net profit (or loss) (line 1 less line 21)		7,850 17

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	13,855 85
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc. Central Photoprint Serv.	Amount,	$ 1,382 05
2. [redacted] vice, 18 E. 42 Sts. NYC	Amount	

3. Merchandise bought for sale	81940	84	15. Bad debts arising from sales or services				
4. Labor			16. Depreciation, obsolescence, and depletion (explain in Schedule F)	669	56		
5. Material and supplies			17. Rent, repairs, and other expenses (explain in Schedule G)	10442	70		
6. Other costs (explain in Schedule G)			18. Amortization of emergency facilities (attach statement)				
7. Total of lines 2 to 6	155640	31	19. Net operating loss deduction (attach statement)				
8. Less inventory at end of year	77947	51	20. Total of lines 11 to 19	$ 30297	05		
9. Net cost of goods sold (line 7 less line 8)	$ 77692	80	21. Total of lines 9 and 20	$107989	85		
10. Gross profit (line 1 less line 9)	$ 38147	22	22. Net profit (or loss) (line 1 less line 21)			7,850	17

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	13,855	85
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)		

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc. Central Photoprint Serv.	Amount,	$	
2. [redacted]vice, 18 E. 42 St., NYC	Amount,	1,382	05
3. Other sources (state nature)	Amount,		
4. Total		1,382	05
Total income from above sources (Enter as item 5, page 1)		$ 25,700	52

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

SCH.	1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
C	Furn. & Fixts.	Var.	13860 00	--	8316 00	5544 00	10 yrs		$ 346.50
C	Air Cond. Unit	1-'47	6461 10	--	1292 22	5168 88	5 yrs		323.06
B	Bldg. 136 W. 32 St.	3/1/48	19341 53	--			25 yrs		644.72

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
B-5	Schedule Attached	$5,866 39			$
C-17	Schedule Attached	$10,442 70			

Dm 63-2

16-[illegible]-3

Schedule D (File with Form 1040)

TREASURY DEPARTMENT
Internal Revenue Service

1948

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

For Calendar Year 1948 or fiscal year beginning ....., 1948, and ending ....., 19...

NAME AND ADDRESS SAMUEL MARCUS, 685 West End Avenue, New York, N. Y.

(1) CAPITAL ASSETS

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	6. Cost or other basis (If not purchased, attach explanation)	7. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS						
			$	$	$	$
1. Totals			$	$	$	$
2. Net short-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 1)						$
3. Enter your share of the net short-term gain or loss from partnerships and common trust funds						
4. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 2 and 3						$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTH						
Stock-136 W. 32 Corp.	1945	2/29/48	$ 43526 79		$ 3000 00	$
Stock-Hillmar Estates, Inc.	1946	10-48	125000 00		101200 00	
Stock-Duane Products, Inc.	1947	8/1048	-0-		25609 08	
Stock-E.57 St. Amusement Corp.	1947	12/1/48	8000 00		17000 00	
5. Totals			$ 176520 79		$ 146809 08	$
6. Net long-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 5)						$ 27,711 71
7. Enter the full amount of your share of the net long-term gain or loss from partnerships and common trust funds						
8. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 6 and 7						$ 27,711 71
9. Enter 50 percent of line 8. This is the amount to be taken into account in summary below						$ 13,855 85
10. Summary of Capital Gains (use only if gains exceed losses in lines 4 and 9):						
(a) Net gain for 1948 (either the sum of gains or difference between gains and losses in lines 4 and 9)						13,855 85
(b) Capital loss carry-over, 1943-1947 inclusive						$
(c) If line (a) exceeds line (b), enter this excess here and on line 1, Schedule D, page 2, Form 1040						13,855 85
(d) If line (b) exceeds line (a), enter the excess here and use line (e) to determine allowable loss						$
(e) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (d); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) $1,000						$
(f) Enter here the amount on line (e) plus any capital loss carry-over from 1943 which was not used against line (a) or in line (e)						$
(g) Subtract line (f) from line (c)						

Stock-HIllmar Estates, Inc.	1946	10-48	125000 00	101200 00	
Stock-Duano Products, Inc.	1947	8/1048	-0-	25609 08	
Stock-E.57 St. Amusement Corp.	1947	12-8/48	8000 00	17000 00	
5. Totals			$176520 79	$148809 08	

6. Net long-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 5)	$ 27,711 71
7. Enter the full amount of your share of the net long-term gain or loss from partnerships and common trust funds	
8. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 6 and 7	$ 27,711 71
9. Enter 50 percent of line 8. This is the amount to be taken into account in summary below	$ 13,855 85
10. Summary of Capital Gains **(use only if gains exceed losses in lines 4 and 9):**	
(a) Net gain for 1948 (either the sum of gains or difference between gains and losses in lines 4 and 9)	$ 13,855 85
(b) Capital loss carry-over, 1943-1947 inclusive	
(c) If line (a) exceeds line (b), enter this excess here and on line 1, Schedule D, page 2, Form 1040	$ 13,855 85
(d) If line (b) exceeds line (a), enter the excess here and use line (e) to determine allowable loss	$
(e) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (d); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses, or (3) $1,000	$
(f) Enter here the amount on line (e) plus any capital loss carry-over from 1943 which was not used against line (a) or in line (e)	$
(g) Subtract line (f) from line (d) and enter the remainder here. This is your capital loss carry-over to 1949	$
11. Summary of Capital Losses **(use only if losses exceed gains in lines 4 and 9):**	
(a) Net loss for 1948 (either the sum of losses or difference between losses and gains in lines 4 and 9)	$
(b) Capital loss carry-over, 1943-1947 inclusive	
(c) Total of lines (a) and (b)	$
(d) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (c); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) $1,000	$
(e) Enter here the amount on line (d) plus the amount of any 1943 capital loss carry-over not used in line (d)	$
(f) Subtract line (e) from line (c) and enter the remainder here. This is your capital loss carry-over to 1949	$

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (enumerate price)	4. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach explanation)	5. Cost or other basis (If not purchased, attach explanation)	6. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913
		$	$	$	$
1. Totals		$	$	$	$

2. Total net gain or loss (columns 3 plus 4 minus the sum of columns 5 and 6). Enter on line 2, Schedule D, page 2, Form 1040... $

See other side for Instructions and Computation of Alternative Tax

DM 63-3

16—60883-1

SAMUEL MARCUS

685 West End Avenue
New York 25, N.Y.

OTHER EXPENSES

YEAR 1948

ITEM # 5 - SCHEDULE B

Wages	$ 6,574.19
Real Estate Taxes	2,772.71
Interest on Mortgage	1,847.71
Water	967.65
Fuel	737.91
Management Fees	513.02
Insurance	507.60
Commission - Renting	423.57
Gas and Electric	369.04
Repairs and Supplies	320.36
Legal and Accounting	298.00
Plumbing	208.62
Uniforms	99.92
Payroll Taxes	65.78
Rubbish Removal	60.00
Elevator Maintenance	41.30
Exterminating	24.75
Miscellaneous	34.26
	$15,866.39

DM63-4

[redacted]

685 West End Avenue
New York 25, N.Y.

RENT, REPAIRS, and OTHER EXPENSES

YEAR 1948

ITEM # 23 -- SCHEDULE A

Rent		$ 1,225.00
Advertising		3,427.46
Commissions		32.34
Auto Expense		80.38
Travelling Expense		36.77
Shipping Expense		312.09
Postage and Parcel Post		939.97
Heat, Light and Power		638.06
Telephone and Telegraph		718.04
Insurance		424.41
Leasehold Maintenance and Repairs		534.73
Stationery and Printing		406.13
Legal and Accounting Fees		810.48
General Expense		1,122.36
Fares		56.62
Contributions		26.50
		10,791.34
LESS: OTHER INCOME:		
Unemployment Insurance Tax Credit	313.06	
Miscellaneous	35.58	348.64
		$10,442.70

DM 63-5

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—
If joint and each wife (or husband) itemizes deductions, file separate returns and one itemizes deductions, the other must itemize

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.			Amount	
Contributions		$		
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$	
Interest		$		
	Total Interest			
Taxes		$		
	Total Taxes			
Losses from fire, storm, or other casualty, or theft.		$		
	Total Allowable Losses (not compensated by insurance or otherwise)			
Medical and dental expenses		$		
	Net Expenses (not compensated by insurance or otherwise)	$		
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses			
	Allowable Medical and Dental Expenses. See Instructions for limitation			
Miscellaneous (See Instructions)	Loan Receivable from East 57th St. Amusemnt Corp.-Corp. unable to meet obligations	$ 38408 35		
	Addl. items spent as guarantor personally for East 57th St. Amusement Corp.	18567 52		
	Total Miscellaneous Deductions		56,975 87	
	TOTAL DEDUCTIONS		$ 56,975 87	

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$	40,900 52
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $1,000 or 10 percent of line 1, above, whichever is the lesser, or $500 if this is the separate return of a married person)		56,975 87
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$	None
4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here		600 00
5. Subtract line 4 from line 3. Enter difference here	$	None

Lines 6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return

6. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 5 (if item 3, above, includes

Medical and dental expenses

Net Expenses (not compensated by insurance or otherwise) $

Enter 5 percent of item 6, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses. See Instructions for limitation

Miscellaneous (See Instructions)

Loan Receivable from East 57th St.Amusement Corp.-Corp. unable to meet obligations 38408 35

Addl. items spent as guarantor personally for East 57th St.Amusement Corp. 18567 52

Total Miscellaneous Deductions 56,975 87

TOTAL DEDUCTIONS $ 56,975 87

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income $ 40,900 52
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $1,000 or 10 percent of line 1, above, whichever is the lesser, or $500 if this is the separate return of a married person) 56,975 87
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income $ None
4. Multiply $600 by total number of exemptions claimed in item 1, page 1. Enter total here 600 00
5. Subtract line 4 from line 3. Enter difference here $ None

Lines 6, 7, and 8 should be filled in ONLY by a single person or a married person making a separate return

6. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 5 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here $
7. If line 6 is (a) not over $400, enter 17% of amount on line 6
   (b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400
   (c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax $

Lines 9 to 13 should be filled in ONLY if this is a joint return of husband and wife

9. Enter here one-half of amount on line 5, above $
10. Use the tax rates shown in Instructions to figure your tentative tax on amount shown in line 9 (if item 3, above, includes partially tax-exempt interest, see Instructions). Enter the tentative tax here $
11. If line 10 is (a) not over $400, enter 17% of amount on line 10
    (b) over $400 but not over $100,000, enter $68 plus 12% of the excess over $400
    (c) over $100,000, enter $12,020 plus 9.75% of the excess over $100,000
12. Subtract line 11 from line 10. Enter the difference here $
13. Multiply amount on line 12 by 2. Enter this tax here. This is your combined normal tax and surtax $
14. If alternative tax computation is made on separate Schedule D, enter here tax from line 12 on back of Schedule D $ None

If you used the standard deduction in line 2, disregard lines 15, 16, and 17, and copy on line 18 the same figure you entered on line 8, 13, or 14, whichever is applicable

15. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116) $
16. Enter here any income tax paid at source on tax free covenant bond interest
17. Add the figures on lines 15 and 16 and enter the total here $
18. Subtract line 17 from line 8, 13, or 14, whichever is applicable. Enter difference here and in item 7, page 1. This is your tax. $

16—83083-2

DM 63-6

Exhibit DME-2

(Photostat)

(See Opposite) ☞

EXHIBIT DME-2

August 26th 1948.

Mr. Sam Greene,
18 E. 42nd St.,
New York City.

Dear Sir:

The undersigned, Al Sherman, does hereby offer to purchase all of your shares in Milner Estates, Inc., consisting of approximately 62 1/2% of the outstanding shares (described as all those shares not held by Bill Miller or Al Sherman) for the sum of $125,000. payable as follows:

	execution
$19,000.	on account of this agreement, receipt whereof is hereby acknowledged.
$11,000.	upon execution of the necessary papers called for in this agreement.
$ 3,000.	each month on the first day of each and every month that the Riviera (or successor).
$ 1500.	each month of the first day of each and every month that the Riviera is closed; and for the purpose of this clause, the question of whether or not the Riviera is open or closed, shall be the state of affairs that prevail on the 1st day of each month.

The shares in question shall not be transferred until the sum of $125,000 shall have been paid in full, plus interest at 4% on the unpaid balance of $95,000.

All security and escrow agreements now in existence between the Landlord and the tenant shall remain in force until the entire amount called for in this agreement is paid.

In the event of default in the terms of this agreement, you may, at your option, cancel this agreement by ~~notifying~~ registered mail addressed to the undersigned, retaining all payments received as liquidated damages.

The undersigned acknowledges that no representations whatsoever have been made by us, and further acknowledges that he has read each and every contract, lease, deed etc, involving the property owned by the corporation. You are authorized to pay all outstanding loans, obligations, taxes, etc, of the corporations and to turn over any surplus at the time of transfer when the $125,000 shall have been paid in full. Adjustments of the corporation shall be computed at the time of transfer of title.

Your attorney shall be permitted to prepare (within 30 days) a formal agreement containing usual clauses, at your option.

Exhibit DME-3

(Photostat)

(See Opposite) ☞

August 18, 1968

Agreement made this day between William (Bill) Miller hereinafter called party of the first part also known as the buyer and Sam Marcus hereinafter called party of the second part also known as the seller. The party of the first part agrees to purchase all right title and and interest including all outstanding stocks, notes, I.O.U.'s options, agreements and any other transactions that the party of the second part has participated in with the party of the first part including the agreements in the following company's and corporations.

1. William (Bill) Miller

2. Miller Realty Corp.

3. Bill Miller's Riviera, Inc.

The party of the second part herewith agrees to sell all of the above mentioned assetts which he now claims he is the sole owner and agrees to the following terms of payment for all of the above mentioned items.

The purchase price for all of the items herein mentioned is One Hundred and Twenty five Thousand Dollars ($125,000.00) to be paid as follows:

The party of the first part agrees to pay $5000.00 to the party of the second part upon the signing of this agreement.

Dollars to be paid by the party of the first part to the party of the second part upon final signing of all papers releases and whatever other documents that will be necessary to be signed to release Bill Miller and all of the other companies and corporations herein

[illegible] party of the first part to the party of the second part upon final signing of all papers releases and whatever other documents that will be necessary to be signed to release Bill Miller and all of the other companies and corporations herein mentioned.

The balance of Dollars to be paid as follow.

First payment of Three Thousand Dollars shall to paid one Month from date the final documents shall be signed and delivered. Thereafter a payment of Three Thousand Dollars shall be made each month that Bill Miller's Riviera shall be open for business.

-2-

In the period that Bill Miller's Riviera shall be closed and not open for business a payment shall be made each month of One Thousand Five Hundred Dollars.

Upon the signing of this agreement it shall be a legal and irrevocable contract.

L.S._____

L.S._____

Witness_____

Date _____

EXHIB IT DME-3

Exhibit DME-4

(Photostat)

(See Opposite) 247

Class of Service

This is a fullrate Telegram or Cablegram, unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

JOSEPH L. EGAN
PRESIDENT

SYMBOLS

DL=Day Letter
NL=Night Letter
LC=Deferred Cable
NLT=Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

W. U. 5. 11.50 P. M. SEPT. 12/48 CHARLOTTE,N.C.

BILL MILLER,
BILL MILLER'S REVIERA, FORT LEE,N.J.

THIS TELEGRAM WILL AUTHORIZE YOU TO SIGN MY NAME TO ALL PAPERS LEGALIZING SALE OF MILMAR CORPORATION TO ME.

AL. BIERMAN/

EXHIBIT DME-4

225b

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

Exhibit DME-19A

(Photostat)

(See Opposite) ☞

EXHIBIT DME-19A

Number 17 — INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY — 5?? Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 — PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certifies that SAMUEL MAGGIO is the owner of 500 Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 14th day of September 19 47

Robt J Schwartz
SECRETARY-TREASURER

John Maggio
PRESIDENT

[redacted]

John Maggio

Exhibit DME-19B

(Photostat)

(See Opposite) ☞

EXHIBIT DME-19B

Number 19 INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY 125 Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certifies that SAMUEL MORRIS is the owner of 125 Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 14th day of August 19 44

Robt. E. Johnson
SECRETARY-TREASURER

Milt Klumer
PRESIDENT

For value received _____ hereby sell, assign and transfer unto _____ _____ shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

In presence of _____

Milt Klumer

Exhibit DME-20A

(Photostat)

(See Opposite) ☞

EXHIBIT DME-20A

Number 18 DME INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY 500 Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certifies that SAMUEL MARCUS is the owner of 500 Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 14th day of September 1942

Robt J. Schwartz
SECRETARY-TREASURER

Samuel Marcus
PRESIDENT

For value received _____ hereby sell, assign and transfer unto

_____

_____

_____ shares

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney to

transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

In presence of

Samuel Marcus

Exhibit DME-20B

(Photostat)

(See Opposite) ☞

EXHIBIT DME-20B

Number 20 — INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY — 125 Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 — PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certifies that SAMUEL S. MORRIS is the owner of 125 Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 1st day of September 19 48

Robt J. Schantz
SECRETARY-TREASURER

Emil Reuss
PRESIDENT

For value received _____ hereby sell, assign and transfer unto _____ shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint _____ Attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated _____

In presence of

_____

Emil Reuss

Exhibit DME-21

(Photostat)

(See Opposite) ☞

Certificate No. 1

For

9

Shares

Issued to

William Miller

Hudson Terrace, Fort Lee N.J.

Dated

April 15 1911

Transferred from

Date of Surrender

No. Original Shares | No. Original Shares | No. of Shares Transferred

No. Shares Now Standing Above
(on Original Issue only)

Received
Certificate No.
For

Shares

No.

Certificate No. 2

For 4 Shares

Issued to

Sam Marcus

Dated

April 15 19 46

Transferred from

Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Affix Revenue Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 3

For 2 Shares

Issued to Marguerite K. Kane

of 5 Lafayette Ave Bradenbrook N.J.

Dated April 15 19 46

Transferred from Original

Dated of Transfer

No. Orig. and Certificate	No. Original Shares	No. of Shares Transferred
	2	

19__

Pasted Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19__

EXHIBIT DME-21(Cont'd

EXHIBIT DME-21(Cont'd)

Certificate No. 4

For 491 Shares

Issued to William Muller

Dated June 7 19 46

Transferred from

Date of Transfer 19

Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For
Shares
19

Number 4

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY

491 Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certifies that William Muller is the owner of Four Hundred Ninety-One Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

WITNESS the Seal of the Corporation and the signatures of its duly authorized Officers affixed this Seventh day of June 1946

SECRETARY-TREASURER

PRESIDENT

EXHIBIT DME-21(Cont'd)

Certificate No. 5

For 491 Shares

Issued to Sam Marcus

Dated June 4 1946

Transferred from Original

Date of Transfer 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Affix Federal Tax Stamp Here (on Original Issue only)

Received Certificate No.

For Shares

19

Number 5

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY

491 Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

This Certificate that Sam Marcus is the owner of Four Hundred Ninety-One Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

WITNESS the Seal of the Corporation and the signatures of its duly authorized Officers affixed this Seventh day of June 1946

SECRETARY-TREASURER

PRESIDENT

Certificate No. 6

For

125 Shares

Issued to

Sam Marcus

Dated

June 7 19 46

Transferred from

Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 7

For

71 Shares

Issued to

Sam Maiello

Dated

June 7 19 46

Transferred from

Original

Date of Transfer

19

Original Certificate	No. Original Shares	No. of Shares Transferred
1		

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 8

For

300 Shares

Issued to

Sam Marcus

Dated

June 4 19 46

Transferred from

Date of Transfer

19

Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 9

For

100 Shares

Issued to

Sam Marcus

Dated

June 7 1946

Transferred from

Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received

Certificate No.

For

Shares

19

Certificate No. 10

For

116 Shares

Issued to

William Miller

Dated

June 7 19 46

Transferred from

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred
2	2	

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 10

For

116 Shares

Issued to

William Miller

Dated

June 7 19 46

Transferred from

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred
2	2	

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 11

For

125 Shares

Issued to

William Miller

Dated

June 7 1946

Transferred from

Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original issue only)

Received

Certificate No.

For

Shares

19

Certificate No. 12

For

125 Shares

Issued to

William Miller

Dated

June 7 19 41

Transferred from

Original

Date of Transfer

19

Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(On Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 13

For

250 175 Shares

Issued to

William Miller

Dated

June 7 19 40

Transferred from

Original

Date of Transfer

19

Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 14

For

32

Shares

Issued to

Robert Schwartz

Dated

June 7 19 46

Transferred from

Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 15

For 93 Shares

Issued to Robert Schwartz

Dated June 7 19 VI

Transferred from. Original

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred
1	1	

Paste Federal Tax Stamp Here (on Original Issue only)

Received Certificate No.

For

Shares

19

Certificate No. 16

For

20 Shares

Issued to

Ab M. Bierman

June 7, 1947

Dated

19 4

Transferred from

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 17

For

500 Shares

Issued to

Samuel Downs

Sept 14/48

Dated

19

Transferred from

Date of Transfer

19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19

Certificate No. 18

For

500 Shares

Issued to

Samuel Mann

Sept 14/48

Dated

19__

Transferred from

Date of Transfer

19__

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19__

Certificate No. 19

For

125 Shares

Issued to

Samuel Moreno

Sept 14 1948

Dated

19__

Transferred from

Date of Transfer

19__

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.

For

Shares

19__

Certificate No. 20

For

125 Shares

Issued to

Samuel Francis

Sept 14/46

Dated

19__

Transferred from

Date of Transfer

19__

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

Received
Certificate No.
For

Shares

19__

EXHIBIT DME-21(Cont'd

Certificate No. 21
For

_____ Shares
Issued to

_____
Dated

_____ 19 _
Transferred from

_____
Date of Transfer

_____ 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Paste Federal Tax Stamp Here
(on Original Issue only)

_____
Received
Certificate No. ____
For

_____ Shares

_____ 19

Number 21

INCORPORATED UNDER THE LAWS OF
THE STATE OF NEW JERSEY

_____ Shares

MILMAR ESTATE, INC.

CAPITAL STOCK $1,000,000 PAR VALUE $100.

FULL PAID AND NON-ASSESSABLE

[redacted] is the owner of _____ Shares of the Capital Stock of

MILMAR ESTATE, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this _____ day of _____ 19__

_____ SECRETARY-TREASURER

_____ PRESIDENT

Excerpts from Exhibit DME-28

THIS AGREEMENT BETWEEN

MILMAR ESTATES INC., a New Jersey Corporation,

as Landlord

and

BILL MILLER'S RIVIERA INC., a New Jersey Corporation,

as Tenant

WITNESSETH: The Landlord hereby leases to the Tenant the following premises: located in the Borough of Fort Lee, in the County of Bergen, State of New Jersey, as is more fully described in Schedule "A" attached hereto, together with the chattels more fully described in Schedule "B" attached hereto, both of which schedules describing the property and chattels leased respectively are made a part hereof, which inventory is to be taken mutually within three weeks, as a condition of this lease.

for the term of five years commencing May 19, 1957 to commence from the 19th day of May one thousand nine hundred and forty-seven and to end on the 30th day of December one thousand nine hundred and fifty-one to be used and occupied only for a high class restaurant and cabaret and for no other purpose.

upon the conditions and covenants following:

1st. That the Tenant shall pay the annual rent for the years 1947, 1948 of forty thousand dollars ($40,000) per annum, payable two thousand dollars ($2,000) each week for twenty weeks commencing with the first Monday after the opening of each season's operation in any year and each subsequent Monday thereafter until the sum of forty

thousand dollars ($40,000) shall have been paid with due allowance to the Tenant for all payments made during February of each year as hereinafter mentioned; and for the years 1949, 1950 and 1951, the tenant shall pay the sum of sixty thousand ($60,000) dollars per annum, payable three thousand dollars ($3,000) each week for twenty weeks commencing with the first Monday after the opening of each season's operation in any year and each subsequent Monday thereafter until the sum of sixty thousand dollars ($60,000) shall have been paid, with due allowance to the Tenant for all payments made during Feb. of each year.

2nd. That the Tenant shall take good care of the premises and shall at the Tenant's own cost and expense make all repairs and replacements for lost or damaged chattels rented hereunder as well as to the property leased and improvements thereon,

and at the end or other expiration of the term, shall deliver up the demised premises and chattels in good order or condition, damages by the elements excepted.

• • •

35th. If in any proceeding of whatsoever nature a receiver or trustee be appointed for the Tenant's property or if this lease or the estate of the Tenant be transferred or pass to or devolve upon any other person or corporation except with the express prior written consent of the landlord, this lease shall thereby at the option of the landlord be cancelled and in that case neither the Tenant nor anybody claiming under the Tenant shall be entitled to go into possession of the demised premises and the landlord shall be under no further obligation hereunder.

• • •

40th. Any additional monies necessary for the payment of interest and amortization on the first mortgage covering the premises herein described, and real estate taxes and insurance charges over and above the amount paid as rent

to the Landlord, is to be paid for by the Tenant out of its profits provided, however, that the Tenant shall make such payments as aforesaid only if available out of the profits of its operation in each year. If there are insufficient profits, then the Tenant shall pay all of its profits towards the said obligations; and in any event even if there shall be no profits, the Tenant shall be required to pay 50% of all monies needed for the above mentioned purpose. For the purpose of this paragraph, the salary of Bill Miller shall be limited to $375; per week and no other officer of the Tenant corporation is to draw salaries for the purposes of this computation. For the purposes of this paragraph, profits shall be described as of income less expenses and before depreciation and taxes.

43rd. The Tenant shall be entitled to file a claim for the value of the unexpired term of its lease in the event of a condemnation, against the condemning authorities.

44th. The Landlord shall have an absolute right to check any and all receipts, computations, cash registers, guest checks, billings and each and every book of entry and book of account maintained by the Tenant.

45th. It is a condition of this lease that the Tenant shall comply with the terms of a stipulation dated May , 1947 entered into with Oscar Marcowitz for the payment of $19,000.; and it is a further condition of this lease that the Tenant shall meet each and every installment and the principal due to Flo Barlyn, Inc.

* * *

47th. Commencing with JaJnuary 1, 1949 and annually thereafter, the Landlord herein shall have the right at its sole option and at any time during each of the said years, to require the Tenant herein to purchase from Samuel Marcus, or associates, (a stockholder of the Landlord) one-seventh of Marcus' original stock in Milmar Estates, Inc. (approximately 62% of Milmar Estates, Inc.) for the sum of $30,000 for each one-seventh portion of Marcus' (or associates)

original shares. It is a condition of this lease that the Tenant shall comply with such payment on the part of the Corporation within thirty days of the making of such demand. The shares of stock to be sold to the Tenant herein shall be free and clear of any encumbrances.

48th. The tenant is to be given a sixty day written first refusal in the event of a bona fide offer on a proposed sale of the premises; such notice not to be given before December 1, 1948. Thereafter, the Landlord shall give written notice of such proposed sale to the Tenant, and the Tenant shall have sixty days to meet such offer; in the event that the Tenant fails to meet such offer, then the Landlord may sell the said premises to such bona fide purchaser and this lease shall be cancelled, provided however that the Landlord will pay to the Tenant the sum of twenty thousand dollars ($20,000) in order to cancel this lease. In the event that at the time of the cancellation of the lease as called for under this clause, the Tenant shall be obligated to any acts contracted for in writing, then the Landlord will assume the Tenant's obligations under the terms of such contracts, provided, however, that the Tenant will promptly notify the Landlord in writing of the terms of such contract.

* * *

IN WITNESS WHEREOF, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) this 23rd day of July 1947.

MILMAR ESTATES, INC.,
by SAMUEL MARCUS, *Pres.* *L. S.*

BILL MILLER'S RIVIERA, INC., *L. S.*
WILL. MILLER, *Pres.* *L. S.*

Signed, sealed and delivered
in the presence of

J. B. HOFFMAN

Exhibit DME-33

(Photostat)

(See Opposite) ☞

Exhibit DME-31

(Photostat)

(See Opposite) ☞

EXHIBIT DME-31

Aug 8, 1948
Received from Al Kelverson
Five Thousand Dollars
(5000.00)
Bill Spiller

D-ME-31

Exhibit DME-32

(Photostat)

(See Opposite) ☞

No. 2 BROOKLYN, N. Y. Oct 1 1948 D

THE PUBLIC NATIONAL BANK AND TRUST COMPANY 1-127
OF NEW YORK
PITKIN AVE. AND WATKINS ST.

PAY TO THE ORDER OF Leon Marcus $3000 00/100

Three Thousand 00/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE INC

A. E. Elkon Pres

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY				
DATE			AMOUNT	
Oct.	1	Inv.	316	66
Nov.	1	Inv.	306	66
		Inv.	1500	—
TOTAL OF INVOICES			2123	32
TOTAL DEDUCTIONS				
AMOUNT OF CHECK			2123	32

MILMAR ESTATE, Inc. 2

Brooklyn, N. Y. Nov 4 1948 1-127/210

PAY TO THE ORDER OF Sam Marcus $2123. 32/XX

Twenty One Hundred Twenty Three 32/XX DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET D

MILMAR ESTATE, Inc.

A. E. Elkon PRESIDENT SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY				
DATE			AMOUNT	
Dividend			1500	—
Inv.		Inv.	301	66
			1801	66
TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK				

MILMAR ESTATE, Inc. 4

Brooklyn, N. Y. Dec. 1 1948 1-127/210

PAY TO THE ORDER OF Leon Marcus $1801 66/100

Eighteen hundred and one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY

MILMAR ESTATE, Inc.

TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

PAY TO THE ORDER OF [illegible] $1801 00

Eighteen hundred and one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

[signature] PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY		
DATE		AMOUNT
Jan		296 66
of Trust		1500 -
		1796 66
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

MILMAR ESTATE, Inc. 6

Brooklyn, N. Y. Jan 4 1949 L-127 210

PAY TO THE ORDER OF Sam Marcus $1796 66/100

Seventeen hundred ninety-six 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

[signature] PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY		
DATE		AMOUNT
Principal		1500 -
Interest		291 65
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		1791 65

MILMAR ESTATE, Inc. 8

Brooklyn, N. Y. Feb 1 1949 L-127 210

PAY TO THE ORDER OF Samuel Marcus $1791 65/100

Seventeen Hundred Ninety One 65/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

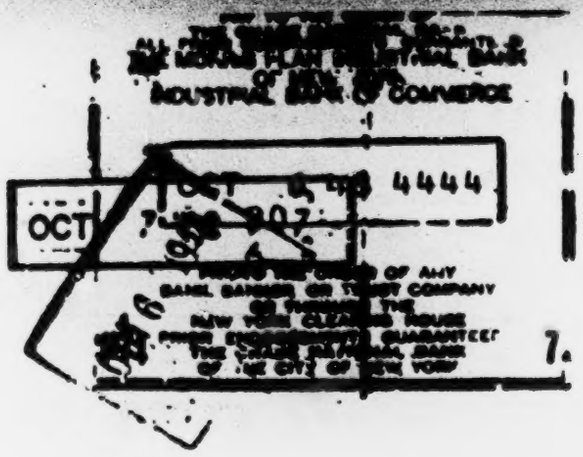
D

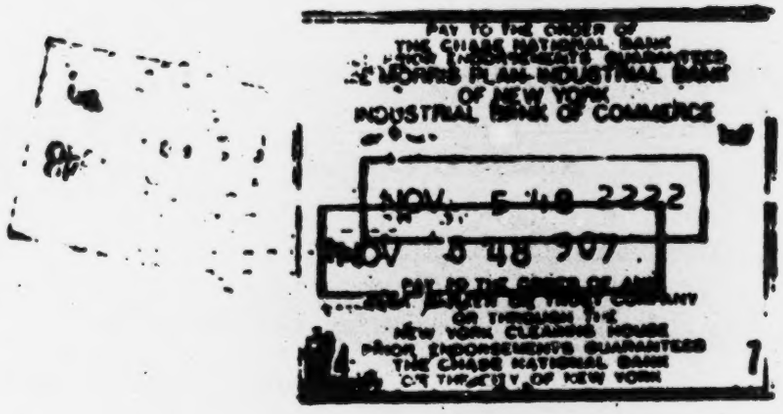
MILMAR ESTATE, Inc.

[signature] PRESIDENT

SECRETARY

EXHIBIT DME-32 (Cont'd)


INDUSTRIAL BANK OF COMMERCE
OCT
4444
907
7.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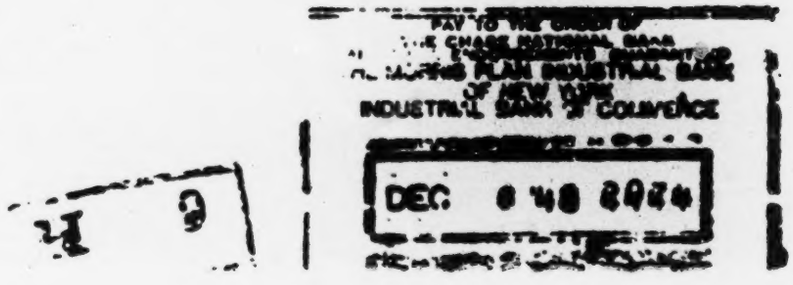

INDUSTRIAL BANK OF COMMERCE
DEC 6 48 2424

Samuel Quinn

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE	AMOUNT
Principal 15 00	
Int	28 66
TOTAL OF INVOICES	1786 66
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	

MILMAR ESTATE, Inc. 10

Brooklyn, N. Y. March 2 1949 L-127 210

PAY TO THE ORDER OF [redacted] Mairas $1786 66/100

Seventeen Hundred Eighty Six 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE	AMOUNT
4th Int	
1/4 Int	
Prin	281 66
Prin	1500
TOTAL OF INVOICES	
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	1781 66

MILMAR ESTATE, Inc. 12

Brooklyn, N. Y. April 1st 1949 L-127 210

PAY TO THE ORDER OF Sam Mairas $1781 66/100

Seventeen Hundred Eighty One 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE	AMOUNT
4% Int	81 500
	271 66
Prin	3000 —
TOTAL OF INVOICES	3 271 66
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	

MILMAR ESTATE, Inc. 16

Brooklyn, N. Y. May 5, 1949 L-127 210

PAY TO THE ORDER OF Sam Mairas $3,271 66/100

Thirty-two hundred seventy-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK

MILMAR ESTATE Inc.

TOTAL OF INVOICES			3	27166
TOTAL DEDUCTIONS				
AMOUNT OF CHECK				

PAY TO THE ORDER OF Sam Marcus 71" $3,271 66/100

Thirty-two hundred seventy-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Prod.		3000	-
Sept		261	66
TOTAL OF INVOICES		3261	66
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

MILMAR ESTATE, Inc. 19

Brooklyn, N. Y. May 31, 1949 1-127/210

PAY TO THE ORDER OF Sam Marcus $3,261 66/100

Thirty-two hundred sixty-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Prod.		3000	-
Sept.		251	67
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3251	67

MILMAR ESTATE, Inc. 26

Brooklyn, N. Y. June 30, 1949 1-127/210

PAY TO THE ORDER OF Sam Marcus $3251 67/100

Thirty-two hundred fifty-one 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

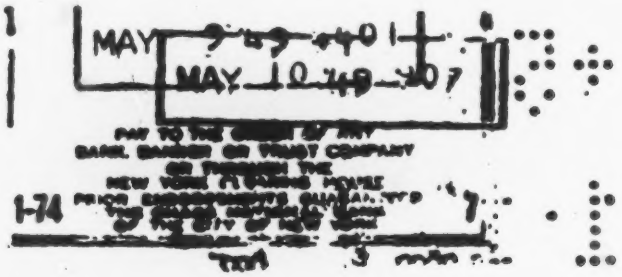
D

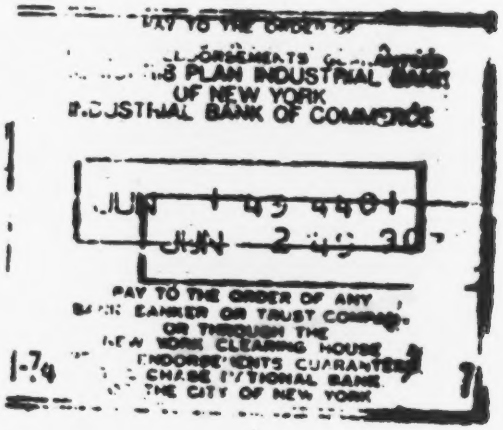
MILMAR ESTATE, Inc.

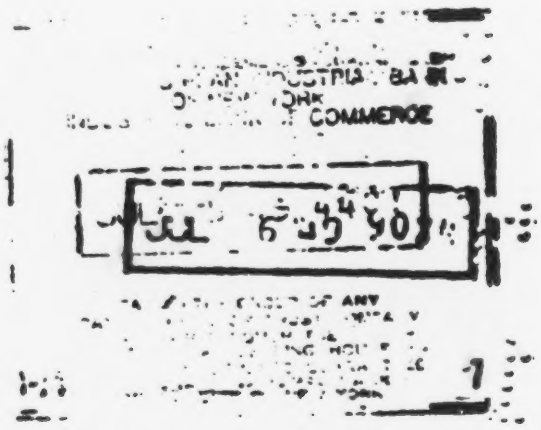
PRESIDENT

SECRETARY

EXHIBIT DMB-32 (Cont'd.)


MAY
MAY 10
1-74


PAY TO THE ORDER OF ANY
BANK BANKER OR TRUST COMPANY
OR THROUGH THE
NEW YORK CLEARING HOUSE
ENDORSEMENTS GUARANTEED
CHASE NATIONAL BANK
THE CITY OF NEW YORK
JUN
JUN
1-74


COMMERCE

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
August 1st 1942		Payment	
		3000	00
Hold			
Tax 4 Years		241	66
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3241	66

MILMAR ESTATE, Inc. 35

Brooklyn, N. Y. July 31 1942 — 1-187 / 212

PAY TO THE ORDER OF Sam Marcus $3241.66

Three thousand two hundred forty-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Note due		9/1/42	
		3000	-
4% Int.			
on 66,500			
for 1942-31		231	66
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3231	66

MILMAR ESTATE Inc. 41

Brooklyn N Y Sept 1 1942 — 1-187 / 212

PAY TO THE ORDER OF Sam Marcus $3231.66

Three thousand two hundred thirty-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Note due		9/1/42	
		3000	-
4% Int.			
on 66,500			
for 1942-31		221	66
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3221	66

MILMAR ESTATE Inc. 67

Brooklyn, N. Y. Oct. 1 1942 — 1-187 / 212

PAY TO THE ORDER OF Sam Marcus $3221.66

Three thousand two hundred twenty-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK

Jan 19/A-31	321 66
TOTAL OF INVOICES	
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	321 66

PAY TO THE ORDER OF Harry Hyams $321.66

Three-hundred-twenty-one 66/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

William Miller PRESIDENT SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE	AMOUNT
Milk Chgs	11/1/49
	150 —
Interest	211 67
TOTAL OF INVOICES	1,711 67
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	

MILMAR ESTATE Inc. 52

Brooklyn, N. Y. Nov. 1 1949 L-137 210

PAY TO THE ORDER OF Sam Moreira $1711 67/100

Seventeen hundred eleven 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

William Miller PRESIDENT SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE	AMOUNT
4% Milk	
Oct 31 Chgs	211 67
	1500 —
TOTAL OF INVOICES	
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	1711 67

MILMAR ESTATE, Inc. 54

Brooklyn, N. Y. Dec 1 1949 L-137 210

PAY TO THE ORDER OF Sam Moreira $1711 67/100

Seventeen Hundred Eleven 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

A. Keveles PRESIDENT SECRETARY

EXHIBIT DME-32(Cont'd)

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Nov. 4			
11/30		15	00
Dec. 1st		1681	67
TOTAL OF INVOICES		1796	67
TOTAL DEDUCTIONS			67
AMOUNT OF CHECK			

MILMAR ESTATE, Inc. 57

Brooklyn, N. Y., Jan. 1 1950 L-127/210

PAY TO THE ORDER OF Sam Marcus $1706 67/100

Seventeen hundred & six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT
SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
		60	50
Dec. 7th		150	
Dec. 15		59	00
Dec. 27 - 30			
TOTAL OF INVOICES		291	67
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

MILMAR ESTATE, Inc. 59

Brooklyn, N. Y., Jan. 3 1950 L-127/210

PAY TO THE ORDER OF Sam Marcus $1701 67/100

Seventeen hundred & one 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT
SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Dec. 21 - 31		146	67
Nov.		150	
		1696	67
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

MILMAR ESTATE, Inc. 61

Brooklyn, N. Y., March 1 1950 L-127/210

PAY TO THE ORDER OF Sam Marcus $1696 67/100

Sixteen hundred & ninety-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY

MILMAR ESTATE, Inc.

TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK				

PAY TO THE ORDER OF [illegible] $1696 [illegible]

Sixteen Hundred & Ninety-six [illegible] DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

[signature] PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

MILMAR ESTATE, Inc. 65

Brooklyn, N. Y. March 30 19 56 1-127 210

PAY TO THE ORDER OF [illegible] $1692 56 XX

**1692 DOLLARS 50 CTS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

[signature] PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
[illegible]		134	67
[illegible]			
Paid [illegible]			83
		185	84
Note		3000	—
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3185	84

MILMAR ESTATE, Inc. 67

Brooklyn, N. Y. April 29 19 56 1-127 210

PAY TO THE ORDER OF [illegible] $3185. 84 XX

Thirty One Hundred Eighty Five 84/XX DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

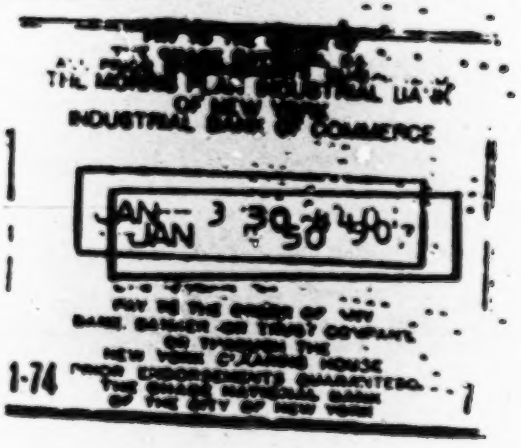
PITKIN AVENUE AND WATKINS STREET

D

[signature] PRESIDENT

SECRETARY

EXHIBIT DME-32


INDUSTRIAL BANK OF COMMERCE
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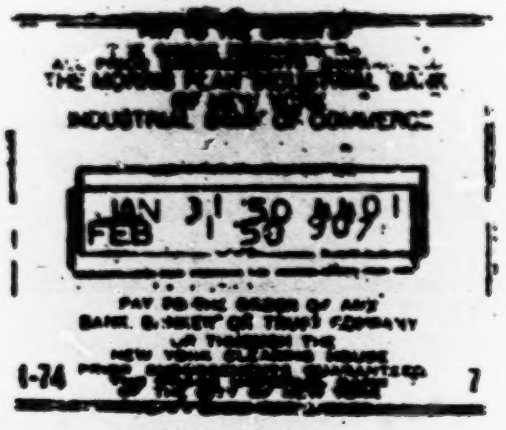
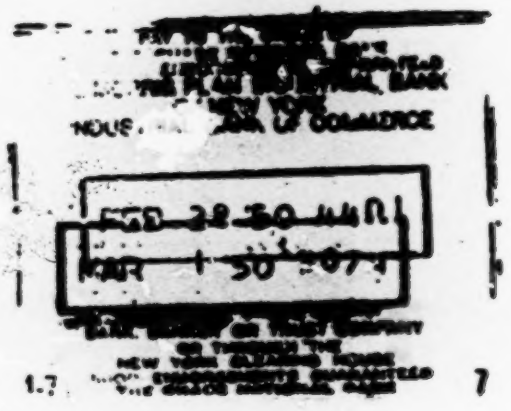
JAN 1 50 90
1-74


INDUSTRIAL BANK OF COMMERCE
JAN 31 30 940
FEB 1 50 909
1-74


FEB 28 30 1141
MAR 1 50 907
1-74

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE			AMOUNT	
4% Sept 1st			3000	—
			176	67
Thirty			3000	—
			3176	67
Bal Due				
TOTAL OF INVOICES			3176	67
TOTAL DEDUCTIONS				
AMOUNT OF CHECK				

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

72

Brooklyn, N. Y., June 1, 1950 L-127 210

PAY TO THE ORDER OF Sam Marcus $3,176 67/100

Thirty-one hundred & seventy-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

Will Fuller PRESIDENT SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE			AMOUNT	
Quarterly at rate 9/1/50				
			3000	—
Sept 1st				
Bal.			166	67
TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK			3166	67

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

80

Brooklyn, N. Y., July 1, 1950 L-127 210

PAY TO THE ORDER OF Sam Marcus $3166 67/100

Thirty-one hundred & sixty-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

Will Fuller PRESIDENT SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE			AMOUNT	
Quarterly			3000	—
Sept 1st			156	67
TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK			3156	67

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY

MILMAR ESTATE, Inc.

87

Brooklyn, N. Y., August 1, 1950 L-127 210

PAY TO THE ORDER OF Sam Marcus $3156 67/100

Thirty-one hundred & fifty-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

MILMAR ESTATE, Inc.

TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK	3156	67

PAY TO THE ORDER OF Sam Marcus $3156 67/100

Thirty-one hundred & fifty-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Comm. Note Payment due 9/15/50			
		44 000	—
this ck.		3 000	—
Balance		41 000	—
TOTAL OF INVOICES			
TOTAL DEDUCTIONS		146	67
AMOUNT OF CHECK		3146	67

MILMAR ESTATE, Inc. 97

Brooklyn, N. Y. Sept 1 1950 L-127 210

PAY TO THE ORDER OF Sam Marcus $3146 67/100

Thirty-one hundred - forty-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

DATE		AMOUNT	
Comm. Note			
		3000	—
Int		136	69
		3136	69
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK		3136	69

MILMAR ESTATE Inc. 103

Brooklyn, N. Y. October 2, 1950 L-127 210

PAY TO THE ORDER OF Sam Marcus $3136 69/100

Thirty-one hundred - thirty-six 69/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

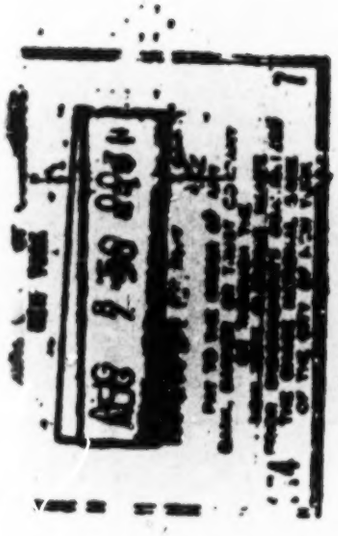
SECRETARY

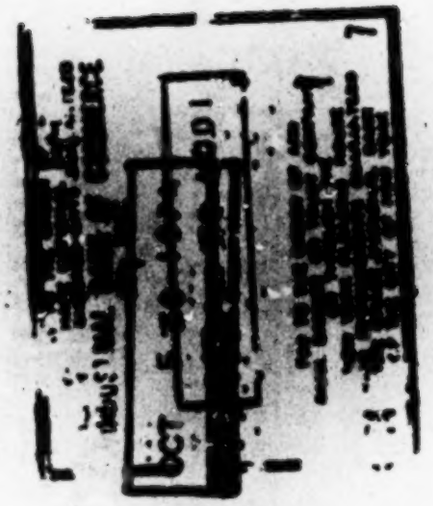
EXHIBIT DME-52(Contid)

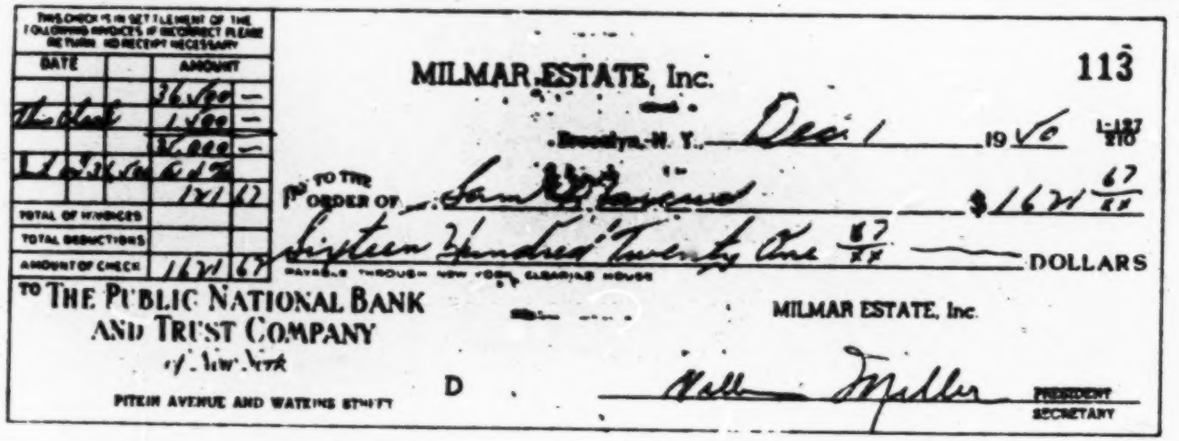
Dear Diane

Dear Diane

Dear Diane







THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

DATE			AMOUNT	
			36 60	—
			1 500	—
			37 000	—
			121	67
TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK			1671	67

MILMAR ESTATE, Inc. 113

Brooklyn, N. Y. Dec 1 19 50 L-127 210

PAY TO THE ORDER OF Sam's Marina $1671 67/100

Sixteen Hundred Twenty One 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

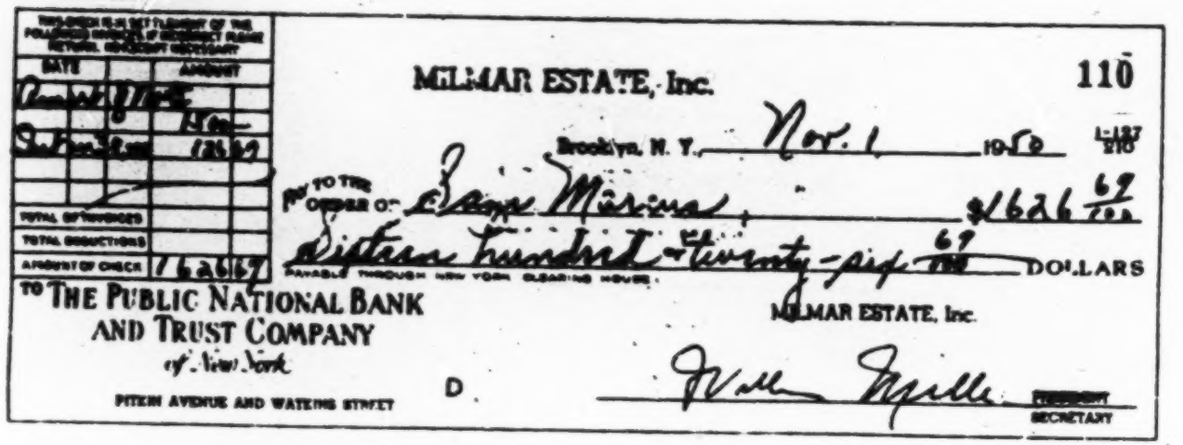
PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES. IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

DATE			AMOUNT	
			1 50	
			125	17
TOTAL OF INVOICES				
TOTAL DEDUCTIONS				
AMOUNT OF CHECK			1626	67

MILMAR ESTATE, Inc. 110

Brooklyn, N. Y. Nov. 1 19 50 L-127 210

PAY TO THE ORDER OF Sam's Marina $1626 67/100

Sixteen Hundred Twenty-six 67/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY of New York

PITKIN AVENUE AND WATKINS STREET

D

MILMAR ESTATE, Inc.

PRESIDENT

SECRETARY

EXHIBIT DME-32(Cont'd)

this contract? A. Frankly, I don't know. I haven't the slightest idea or the reasons for it at all.

• • •

Q. Did you give Mr. Robert Schwartz instructions for drawing this contract? A. I told Mr. Schwartz what my intentions were.

Q. That is, in advance of the drawing of this contract you told Mr. Robert Schwartz what your intentions were? A. At the time of the drawing or in advance. At the time I don't recall just exactly when it was, but Mr. Robert Schwartz had knowledge of my intentions of what transpired.

Q. Well, how did he get knowledge of your intentions? Well, I told him what I intended doing.

Q. Well, was Mr. Miller and was Mr. Bierman present at that time, when you gace Mr. Robert Schwartz instructions as to what were your intentions? A. Well, frankly, I don't think so. No, I don't have any sharp recollections of whether I told him the day before the signing of the contract or two days before, but all I do know was I conveyed my intentions to Mr. Schwartz in the selling of my stock.

• • •

Q. Now, do you have any claims for money against Milmar Estates, Inc.? A. I don't know who I have claims for money from.

Q. Well, now, you are a business man, aren't you? A. I am a business man, yes

Q. I am asking you whether you have any claims for money against Milmar Estates, Inc.? A. I don't know to whom I have claims for money.

Q. I am not asking you about other people. I am asking you specifically whether you have any claims for money against Milmar Estates, Inc.? A. I do not know to whom I have to look for money for claims.

Excerpts from Deposition of Samuel Marcus

Mr. Chazin: Will you please read the question again, Mr. Waxman.

Mr. Grosman: He has answered it.

[The pending question was read by the stenographer.]

Q. What is your answer? A. My answer is I do not know to whom I have claims for money.

Q. Mr. Marcus, you are an intelligent man. You understand the question. I am asking you specifically: Do you have any claims for money against Milmar Estates, Inc.? A. And I am answering just as specifically: I don't know to whom I have to look for redress on money.

Q. Then you do not know whether you have any money claim against Milmar Estates, Inc.? A. That's right, I don't know definitely to whom I have to look for money.

Q. Do you have any other claims against Milmar Estates, Inc.? A. I don't know at this time.

Q. Do you have any claims for money against Bill Miller's Riviera? A. I don't know at this time.

Q. Do you have any other claims against Bill Miller's Riviera? A. I don't know at this time.

Q. Do you have any money claim against Al Bierman? A. I can't say at this time.

Q. Do you know at this time? A. I don't know. I don't know definitely at this time.

Q. Well, tell us to the extent of your knowledge? A. I can't. Everything seems to be in such a muddle here that I refuse to make a definite statement as to who owes me money and who does not owe me money until things get clarified.

Q. Do you have claims for money against Al Bierman? A. I don't care to make a definite statement at this time.

Q. It is not your privilege to care or not to care to make a statement at this time. You are being examined pur-

suant to the rules of the court, and you are required to answer questions, whether you care to or not.

Mr. Grosman: He is answering the question. He is not required to give you the kind of answer that you want.

Mr. Chazin: I am not asking for answers that I want. I just want answers to the questions.

Q. Do you have money claims against Al Bierman? A. I may have and I may not have. Things will have to shape itself up when things get clarified.

Q. Do you know whether you have any claim for money against Al Bierman? A. I don't know for definite. I cannot make a definite answer at this time.

Q. Do you know if you have any claim for money against Al Bierman; do you or don't you know? A. I don't know at this time.

Q. Do you have any other claims against Al Bierman? A. I don't know at this time.

Q. Do you know of any claims for money against Al Kevelson? A. I don't know at this time.

Q. Do you know of any other claims against Al Kevelson? A. I don't know at this time.

Q. Do you have any claims for money against William Miller? A. I don't know at this time.

Q. Do you have any other claims against William Miller? A. I don't know at this time.

Q. Do you have any money claims against Michael Realty Company? A. I don't know at this time.

Q. Do you have any other claims against Michael Realty Company? A. I don't know at this time.

Q. Do you have any money claims against Abraham Lieberman? A. I don't know at this time.

Q. Do you have any other claims against Abraham Lieberman? A. I don't know at this time.

Excerpts from Deposition of Samuel Marcus

Q. Do you have any money claims against Jacob Hoffman? A. Yes, I do.

Q. Are they in any way related to Milmar Estates, Inc., or Bill Miller's Riviera, Inc., or William Miller, or Al Kevelson, or Al Bierman? A. No, they are not.

Q. Do you have any other claims against Jacob Hoffman relating to Milmar Estates, Inc., or Bill Miller's Riviera, Inc., or Bill Miller, or Al Kevelson, or Al Bierman? A. I don't know at this time.

Q. Do you know approximately how long this case is pending? A. No. Frankly, I don't know definitely.

Q. Well, is it closer to a week than to a year? A. Well, by pending do you mean when I was first served?

Q. Yes. A. No. I would say it is about a year, probably more. I don't know the exact dates at all.

Q. Have you made any effort during the period of time to find out whether you have any claims against the people and the corporations that I have mentioned? A. Yes, I did make an effort.

Q. As a result of those efforts have you ascertained any information? A. Yes.

Q. What is the information you have ascertained? A. The information is that the situation is in such a muddle that no one could give me any advice until things were more clarified.

Q. So that as a result of all the efforts that you have made up to this time during this period of one year you do not know whether you have any claims against the persons mentioned? A. We do not know—what is your question again, please?

Q. Following one year of inquiry you still do not know whether you have any claims against the persons mentioned? A. I don't know against which person I may have my claims. We do have claims.

Q. Now, what are your claims? A. It is something I cannot determine until this muddle is straightened out.

Excerpts from Deposition of Samuel Marcus

Q. What are the claims that you do have? A. I don't know what the claims are at this time.

Q. Have you any idea at all what the claims are? A. All I was advised by my attorneys is to the effect that things were in such a hopeless muddle that they could give me no definite advice until matters were clarified.

Q. Do you at the present time know of any claims that you may have against any of these persons mentioned? A. [There was no response.]

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Q. Now, on September 14, 1948 did you as an officer of Milmar Estates, Inc: sign certificates of stocks for 1250 shares of stock of Milmar Estates, Inc., made out to Samuel Marcus? A. I don't understand that.

Mr. Chazin: Will you repeat the question, please, Mr. Waxman.

(The pending question was read by the Stenographer.)

A. I don't recall signing any such papers.

Q. Did you on September 14, 1948 sign any certificates of stock of Milmar Estates, Inc.? A. I believe I endorsed over my 625 shares of stock, which I owned outright, you might say, without any strings attached to it. I signed those, and those were the shares of stock I was selling, and those were the shares of stock turned over to Mr. Lieberman but held in escrow, subject to that agreement of that date.

Q. Now, you did not sign as an officer of Milmar Estates, Inc. any new certificates of stock on that date, did you? A. I don't recall signing any new certificates of stock.

Q. Well, you would remember if you signed any new certificates of stock, would you? A. That is very difficult to say, what I would remember, something that happened

Excerpts from Deposition of Samuel Marcus

three years ago. I know I signed an awful lot of papers that day.

Q. Do you recall whether or not you signed new certificates o. stock on that day? A. I am fairly certain there was no new certificates of stock signed that day.

Q. There were no new certificates of stock signed that day? A. There were no new certificates of stock signed that day.

Q. Was the stock book present at this conference on September 14, 1948? A. I really don't recall whether it was or not.

Q. Do you recall whether or not all the stock certificates issued prior to September 14, 1948 were marked "Cancelled" on the stubs on that date? A. I really don't know what was done on tha date.

Q. Do you remember seeing any one of the four parties, being yourself, Mr. Schwartz, Judge Lieberman, or Mr. Miller mark the stubs in the stock book "Cancelled"? A. I don't believe that the stock book was at that meeting as of that date.

Q. When to the best of your recollection was the last certificate of stock of Milmar Estates, Inc. issued? A. The last certificate of stock was issued to Mr. Al Bierman for 20 shares of stock.

Q. Do you remember when that was? A. I don't recall the exact date. I can't recall the exact date that was. The date would appear possibly on Mr. Bierman's stock.

Q. You do not recall any stock being issued after that? A. There was definitely no stock issued after that.

* * *

Q. Now, will you tell us what shares of stock you delivered to Judge Lieberman on September 14, 1948. A. I delivered to him 625 shares of stock made out to my name.

Q. Do you know the certificate numbers? A. I don't know the numbers at this time, no.

Excerpts from Deposition of Samuel Marcus

Mr. Grosman: We have a receipt for what was delivered to Lieberman.

Mr. Chazin: I would like to see that receipt then.

Mr. Tepper: You furnished us with a copy.

Mr. Chazin: All right, I will withdraw that question.

Q. Referring to Exhibit P-10, for identification, would you tell us what certificates of stock you delivered to Judge Lieberman in escrow on September 14, 1948. A. According to this slip it would be numbers 6, 7, 8, 9, and number 2 would make up the 625 shares.

Q. Now number 6 is what certificate and how many shares? A. Number 6 is 125 shares.

Q. Issued to whom? A. Issued to Sam Marcus.

Q. And number 7? A. Number 7 is 91 shares.

Q. Issued to whom? A. Sam Marcus.

Q. How about number 8? A. 300 shares.

Q. Issued to whom? A. Sam Marcus.

Q. And 9? A. 100 shares, issued to Sam Marcus.

Q. And number 2? A. 9 shares, issued to Sam Marcus.

Q. And these are the shares that you endorsed and turned over to Judge Lieberman on September 14, 1948? A. I believe these were the shares that were turned over.

Q. And there weren't any other certificates that you delivered to Judge Lieberman on that date? A. I don't believe there were any other certificates. All I do know, there was a total of 625 shares of stock, which I endorsed and turned over to Mr. Lieberman as of that date. The numbers of the stocks I do not know.

Q. But they were certificates of stock issued prior to September 14, 1948? A. That's correct.

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Q. Now, the money that you received after September 14, 1948, what was it for? A. That was in payment for the stock, for my stock which I sold to Mr. Kevelson.

Excerpts from Deposition of Samuel Marcus

Q. Do you make any claim to the moneys deposited in Court in this case? A. I do not know how to answer that question. I will leave that to my attorneys to answer that.

Q. I am asking you, not your attorneys, whether you make any claim to those moneys?

Mr. Grosman: He has answered.

A. All I know is that I have coming to me an additional amount of money for the payment of my stock.

Q. How much more is coming to you? A. Oh, in rough figures I would say somewheres between thirty-five and forty thousand dollars.

Q. Do you know that money has been deposited in Court in this suit? A. I have been so told.

Q. Do you make a claim to those moneys? A. As I said before, I do not know whether I make claim to those moneys or not. All I do know, there is money coming to me.

Q. Do you make a claim to the moneys which were deposited in Court?

Mr. Grosman: Now, he has answered that question three times, that he does not know. You are not entitled to the kind of answer you want.

Mr. Chazin: I am entitled to an answer.

Mr. Grosman: You have gotten an answer.

Mr. Chazin: I have gotten an answer from him that he does not know whether he makes a claim or not. Now, I want to find out whether that is his answer.

Mr. Grosman: Keep repeating the answer.

A. I don't know.

Mr. Brigadier: You are instructing the witness what answer he should give, Judge.

Q. Do you make a claim to the moneys deposited in Court in this case? A. I don't know whether I have claim

to that money or not. All I do know, there is moneys coming to me for the sale of my stock.

Q. From whom is the money coming to you? A. I don't know from whom that money is coming to me.

Q. Have you made any effort to ascertain from whom that money is coming to you? A. My attorneys are making an effort to ascertain that.

Q. Have you ascertained from whom moneys to the extent of thirty-five to forty thousand dollars are due to you? A. My attorneys are handling that.

Mr. Tepper: Just a moment. Mr. Chazin, do you know as a lawyer that there is pending in this case a counterclaim to your suit.

Mr. Brigadier: No, there is not.

Mr. Tepper: This witness has testified time and time again that he does not know whether he has a legal claim to that money or whether his attorneys or going to advise him otherwise.

Mr. Chazin: Mr. Tepper, I do not know as a lawyer that a counterclaim is pending. So far as I know, no counterclaim is pending. Secondly, as a lawyer I believe that a witness cannot hide behind saying, "You will have to ask my lawyer." He is the witness. The lawyers are not the witnesses.

Mr. Tepper: But you can't ask a witness to give you a legal opinion. That is what you are trying to have this witness give you, a legal opinion.

Mr. Chazin: No, I am asking him for facts.

Q. I want to know who owes you the thirty-five or forty thousand dollar unpaid balance?

Mr. Grosman: He has answered that.

Excerpts from Deposition of Samuel Marcus

Q. (Continuing) —for the stock? A. I don't know who owes me that money. The entire situation is in a muddle, and until my attorneys advise me who owes me the money I cannot tell you who owes me the money.

Q. Have you made an attempt to ascertain who owes you the money? A. My attorneys have advised me that they cannot tell me who owes me the money until this thing has gone further and the matter cleared up.

Q. So you do not know who owes you that money? A. That's correct.

Q. Now, that is for the stock of Milmar Estates, Inc. sold on September 14, 1948? A. That's for the stock of Milmar, 625 shares of my stock sold on September 14, 1948.

Q. Yes. You do not know who owes you that money? A. That's correct.

Q. Now, I want to ask you whether you have any claims of any nature against Milmar Estates, Inc.? A. I don't know at this time to whom I must look for my claims.

Q. Well, do you have any claims against Milmar Estates, Inc.? A. I don't know at this time whether I have claims against Milmar Estates or not.

Q. Have you attempted to ascertain whether you have such claims?

Mr. Tepper: Mr. Chazin, this almost amounts to badgering the witness. The witness stated to you that he does not know what his legal rights are, that he has retained counsel for that purpose, and that counsel is acting.

Mr. Chazin: Mr. Tepper, I appreciate the feeling with which you are speaking, but this witness has been a very evasive witness and is deliberately trying to avoid committing himself. The purpose of this type of examination is to compel a party to state his position, which this party is seeking to

avoid to do, which under the procedure of the Court he is not permitted to do. The very purpose of the examination is to find out what purpose he has. It is entirely proper.

Mr. Tepper: I don't think you are properly characterizing the witness, Mr. Chazin. You are making a searching investigation and examination, and I think he has been most cooperative.

Mr. Chazin: Well, that is a matter of opinion, sir.

Mr. Tepper: All right.

(The pending question was read by the Stenographer.)

A. I have attempted to ascertain that.

Q. But you have not ascertained? A. The best advice my attorneys can give me is that they can give me no definite answer at this time.

Q. Independent of any advice that your attorneys may give you, do you have any claims against Milmar Estates, Inc.?

Mr. Tepper: That is objected to as being an improper question, in the light of the witness' answer.

Mr. Chazin: Will you repeat the question, please, Mr. Waxman.

(The pending question was read by the Stenographer.)

A. I do not have enough legal knowledge to know who the person or persons are that I am to turn to for my money, and therefore I cannot make any type of statement as to whom I must turn to for my money without my attorney's advice.

Excerpts from Deposition of Samuel Marcus

Q. When you say your money, what do you refer to? A. The money that is coming to me for the sale of my 625 shares of stock, as per agreement of September 14.

Q. Do you have any other claim against Milmar Estates, Inc. independent of what your attorneys may tell you?

Mr. Grosman: He has already answered that.

Mr. Chazin: No, he has not answered that.

Mr. Grosman: Maybe not to your satisfaction.

Mr. Chazin: No, he has not. He is referring only to the claim of the balance of the purchase price of the stock. I am going beyond that.

Mr. Grossman: He has answered that repeatedly, and I object to him being asked the same question over and over again.

Mr. Chazin: That is not the same question.

Mr. Grosman: You asked him before whether he had any claim against Milmar Estates. He has told you.

Mr. Chazin: He says he has a claim for the balance of the purchase price. I am asking him whether aside from that claim he has any other claims against Milmar Estates. What is your answer to that?

Mr. Grosman: He has given you an answer. He does not know.

The Witness: I do not know at this time to whom I have claims against.

Q. What claims do you refer to when you say you do not know against whom you have these claims.

Mr. Grosman: I object to that. He says he does not know what claims he has until he gets his attorneys' advice.

Mr. Chazin: I object to counsel helping the witness.

Excerpts from Deposition of Samuel Marcus

Mr. Brigadier: If he will make the statement that the Judge made, that is what I think Mr. Chazin is trying to get at. He has never said he does not know what claims he has.

Mr. Grosman: He said he does not know until he is advised by his attorney, before whom he has laid all the facts.

Mr. Brigadier: We could expedite this by going off the record.

(Discussion between counsel off the record.)

A. My answer is I do not know what my full claims are until I have been advised by my attorneys.

Q. You say you do not know what your full claims are. Do you know any partial claims? A. I believe there has been a fraud perpetrated on me and until we dig to the bottom and get all the facts I will have to await my attorneys' advice to tell me what my claims are for justice.

Q. Now, will you tell us what the facts are about the fraud? A. I don't know any facts. The facts will have to be unearthed with your witnesses.

Q. Do you at the present time know any facts about an alleged fraud perpetrated upon you? A. Those facts will have to be brought out by some of your witnesses.

Mr. Chazin: Will you repeat the question, please, Mr. Waxman.

(The pending question was read by the Stenographer.)

A. I don't know any definite facts other than what I have told my attorneys. They advised me they cannot help me or advise me until this examination has gone further and they have all the facts on hand.

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Excerpts from Deposition of Samuel Marcus

Q. Now, on September 14, 1948 did Robert Schwartz, as secretary of Milmar Estates, Inc., sign any new certificates of stock? A. I don't know what Mr. Robert Schwartz signed.

Q. You did not sign any certificate of stock? A. I don't recall signing any certificates.

Mr. Tepper: You mean after a certain date?

Mr. Chazin: No. I am saying on September 14, 1948.

Mr. Tepper: I presume that the witness' answer is that he does not recall signing any on September 14, 1948, just for the purpose of clarification.

Mr. Chazin: Well, I will ask the question again.

Q. Did you on September 14, 1948 sign any certificates of stock? A. I don't recall signing any.

Q. I did not finish my question. Did you at any time during the month of September, 1948, sign certificates of stock of Milmar Estates, Inc.? A. I don't recall signing any certificates of stock.

Q. Did you at any time during the month of August, 1948, sign any certificates of stock of Milmar Estates, Inc.? A. I don't recall signing any certificates of stock.

Q. Did you at any time during the year 1948 sign certificates of stock of Milmar Estates, Inc.? A. I can't place the last day, but all I do know the last shares of stock which I did sign was the 20 shares of stock given to Al Bierman.

Q. And after you signed the certificate for 20 shares to Al Bierman you signed no further certificates of stock of Milmar Estates, Inc.? A. To the best of my recollection, I did not.

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Q. Did you sign certificate No. 17 for 500 shares to Samuel Marcus? A. I don't recall signing that certificate.

Excerpts from Deposition of Samuel Marcus

Q. Do you believe that you did or did not sign it? A. I don't recall signing any such certificate.

Q. I am asking you whether you believe you did or did not sign such a certificate?

Mr. Grosman: He answered that.

A. I don't recall signing any such certificate.

Q. What is your best recollection?

Mr. Grosman: You are asking him to guess now.

Q. What is your best recollection?

Mr. Grosman: He says he has no recollection.

Mr. Chazin: That is what you say.

Q. Did you sign certificate No. 17 for 500 shares to Samuel Marcus? A. I do not have any recollection on the signing of this certificate.

Q. You have no recollection one way or the other as to whether or not you signed certificate No. 17?

Mr. Tepper: I object to that. The witness did not so state.

Mr. Brigadier: Well, he is asking the question.

A. I say I have no recollection of signing this certificate.

Q. Mr. Marcus, you have been shown a stub in the stock book of Milmar Estates, Inc. for certificate No. 17, purporting to be for 500 shares issued to Samuel Marcus, dated September 14, 1948. Does that in anyway at all refresh your recollection as to whether or not such a certificate was ever issued? A. It does not.

Q. Does that in any way at all refresh your recollection

as to whether or not you signed such a certificate? A. It does not.

Q. As president or officer of Milmar Estates, Inc.? A. I have no recollection about the signing of this certificate.

Q. Did you ever endorse certificate No. 17 in blank? A. I don't recall ever signing certificate No. 17.

Q. Did you ever endorse certificate No. 17 in blank? A. I don't recall ever seeing certificate No. 17.

Q. Did you ever endorse certificate No. 17 in blank? A. I have no recollections of signing certificate 17 in any fashion.

Q. Front or back? A. Front or back.

Q. Now, certificate No. 17 does not appear on your list, Exhibit P-10, does it? A. That's right.

Q. I show you a stub for certificate No. 18 for 500 shares, issued to Samuel Marcus, dated September 14, 1948, appearing in Exhibit P-78.

For the record, I want to state that all these questions are addressed to stubs in Exhibit P-78.

Mr. Tepper: I object to the form of the question. It should be "purport to be issued" rather than "issued".

Q. I show you a stub for certificate No. 18 for 500 shares, purporting to be issued to Samuel Marcus, dated September 14, 1948. Is the writing on this stub in your hand? A. It is not.

Q. Is it in the hand of Robert Schwartz? A. I don't know.

Q. Do you know whose writing it is? A. I do not.

Q. Did you ever see the writing on this stub before? A. I cannot recall it.

Q. Well, do you have any recollection of ever having seen the writing on this stub before? A. I cannot recall this signature. I have nothing to compare it with, and I wouldn't know.

Excerpts from Deposition of Samuel Marcus

Mr. Tepper: Let the record show that this entry on stub No. 18 in this Exhibit P-78 bears only the language, "500 shares, Samuel Marcus, September 14, 1948," and is otherwise blank with respect to the person from whom the alleged stock was transferred, place of transfer, number of original shares, and the number of shares transferred, and there is no revenue stamp, Federal tax stamp, on the stub. There is no Federal tax stamp on any of them.

Mr. Chazin: On any of the stubs in the book?

Mr. Tepper: On any of the stubs in the book.

Mr. Chazin: Mr. Tepper, I presume you mean that the only written matter on the stub is the number 500, the words Samuel Marcus and September 14, 1948.

Mr. Tepper: Nor is there any other filled in printed matter on this stub.

Mr. Brigadier: It is in evidence. I think both of you are wasting a lot of time.

Q. Mr. Marcus, did you sign as an officer of Milmar Estates, Inc. certificate No. 18? A. I have no recollections of signing certificate No. 18.

Q. Did you endorse certificate No. 18 in blank? A. I do not have any recollections of endorsing certificate No. 18 in blank.

Q. Can you recollect any reason why you should have signed or might have signed certificate No. 18? A. I have no recollections on that whatsoever.

Q. Now, isn't your recollection that you testified last week that no certificates were signed by you after certificate No. 16? A. That is the best of my recollection, yes, sir.

Q. And that is still your recollection? A. That is the best of my recollection, yes.

Excerpts from Deposition of Samuel Marcus

Q. Now, I show you stub for certificate No. 19, 125 shares, purporting to be issued to Samuel Marcus, dated September 14, 1948. Is the writing on this stub in your handwriting? A. It is not.

Q. Is it in the handwriting of Robert Schwartz? A. I don't know.

Q. Do you know whose handwriting it is? A. I do not.

Q. Did you sign certificate No. 19? A. I have no recollections of signing certificate No. 19.

Q. Did you endorse certificate 19 in blank? A. I have no recollections of signing certificate 19 in blank.

Q. I show you a stub for certificate No. 20, for 125 shares, purporting to have been issued to Samuel Marcus, dated September 14, 1948. Is the writing on this stub in your hand? A. It is not.

Q. Is it in the hand of Robert Schwartz? A. I don't know.

Q. Do you know whose writing that is? A. I do not.

Q. Did you sign certificate No. 20? A. I have no recollection of signing certificate 20.

Q. Did you endorse certificate No. 20 in blank? A. I have no recollection of endorsing certificate 20 in blank.

Q. What is your best recollection as to whether or not you signed certificates Nos. 17, 18, 19 and 20? A. I have no recollections of signing any of those certificates at this time.

Q. You testified at the last hearing that you signed no certificates after certificate No. 16? A. To the best of my recollection I signed no certificates after.

Q. To the best of your recollection you signed no certificates after certificate No. 16? A. That's right.

Q. I would like you to sign your name on that paper, which I want to put in evidence. A. (Witness complies.)

Mr. Chazin: I would like this put in evidence as the signature of Samuel Marcus written today.

Excerpts from Deposition of Samuel Marcus

(The paper above referred to was marked Exhibit P-79, in evidence.)

Q. Have you ever seen Robert Schwartz sign his name? A. I have seen his name on papers, but I don't recall seeing him sign his name.

Q. You do not recall ever seeing Robert Schwartz sign his name? A. I cannot recall actually seeing him sign his name.

Q. Now, as a matter of fact, was not Robert Schwartz secretary of Milmar Estates, Inc.? A. He was.

Q. And didn't he sign many papers as secretary of Milmar Estates, Inc.? A. Not many. He signed the stock certificates. I don't know what other papers he may have signed. There wasn't any other transaction but possibly a bank resolution. That's all I know of offhand.

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Q. Prior to September 14, 1948 did you have certificate No. 2 in your possession? A. I did.

Q. What happened to that certificate? A. I believe that was turned over—now, let me see again here. I believe that must have been turned over in escrow as a total number of 625 shares of stock. That was turned over in escrow to Judge Lieberman.

Q. In other words, on September 14, 1948 you delivered certificate No. 2 to Judge Lieberman in escrow? A. I delivered 625 shares of stock to Judge Lieberman to be held in escrow. Just what the certificate numbers were I am not prepared to state, but a total of 625 shares of stock was delivered to Judge Lieberman.

Q. On what date was that? A. On September 14.

Q. What year? A. 1948.

Q. Now, you said that you have in your possession certificates 1, 10, 11, 12, 13, 14, and 15.

Excerpts from Deposition of Samuel Marcus

Mr. Grosman: No, he did not say that.
Mr. Brigadier: He said he "believed".
The Witness: I said I should have in my possession 14 and 15.

Q. You should have in your possession 14 and 15? A. Yes, that's right.

Q. What is the total number of shares represented by 1, 10, 11, 12 and 13? A. They should be 500.

Q. And what is the total of 14 and 15? A. 125.

Q. Did you prior to September 14, 1948, in the month of September, 1948 have in your possession certificates for 1250 shares of Milmar stock? A. I did not.

Q. Did you have in your possession immediately prior to September 14, 1948 certificates for 1125 shares, being 1250 shares less certificates 14 and 15 for 125 shares? A. Prior to September 14 I had in my possession certificates 1, 2, 6, 7, 8, 9, 10, 11, 12 and 13.

Q. Now, which of those certificates did you deliver to Judge Lieberman on September 14, 1948? A. I believe I delivered to him 2, 6, 7, 8, and 9, which makes a total of 625 shares.

Q. Did you endorse those shares in blank when you turned them over to Judge Lieberman? A. To the best of my recollections I think I did, but I am not definitely positive.

Q. You are positive that you did not retain possession of any of these certificates, 2, 6, 7, 8 and 9? A. I did not retain possession of any of those certificates.

Q. Those are the only certificates of Milmar stock that you endorsed and delivered to Judge Lieberman on September 14, 1948? A. That's the only stocks that I can recall at this time that I endorsed and delivered.

Q. To Judge Lieberman on September 14, 1948? A. That's correct.

Excerpts from Deposition of Samuel Marcus

Q. Did you endorse any other certificates of stock of Milmar Estates, Inc. on September 14, 1948? A. I have no recollections of endorsing any other stock on that date.

Q. Did you deliver any other stock of Milmar to Judge Lieberman on September 14, 1948? A. I have no recollection of delivering any other stock to Judge Lieberman.

Q. Have you searched your memory to try to recollect everything that took place on that date? A. I have tried to the best of my ability.

Q. You have tried to the best of your ability to search and probe your memory? A. That's right.

Q. And you have no recollection at all of having endorsed any other certificate of stock of Milmar Estates, Inc. on or about September 14, 1948? A. I have no recollections of endorsing any other stock.

Q. And does the same answer stand for the month of August and the month of September, 1948? A. That's true.

Q. Now, have you also searched and probed your memory as to whether or not you signed as an officer of Milmar Estates, Inc. any new certificates of stock on September 14, 1948? A. I have no recollection of signing any new certificates on that date.

Q. Have you searched and probed your memory? A. I have done so to the best of my ability.

Q. You have made every effort to try to recollect whether or not you signed such stock? A. I did.

Q. And your recollection is that you did not sign such stock? A. To the best of my recollection I cannot recall signing any such stock.

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Excerpts from Deposition of Samuel Marcus

SAMUEL MARCUS, resumed the stand, and testified further as follows:

Direct Examination by Mr. Chazin [Continued]:

Q. Mr. Marcus, have you since the last hearing looked for more records relative to this matter? A. I have made some searches.

Q. Have you found additional records? A. I found certain things, yes.

Q. Do you have with you any shares of stock? A. I have.

Q. In Bill Miller's Riviera, Inc.? A. Riviera, no.

Q. Rather in Milmar Estates? A. I have.

Q. May I see them, please. A. [Witness hands papers to Mr. Chazin.]

Mr. Chazin: Mr. Marcus produced certificate No. 1 of Milmar Estates, Inc., 9 shares, dated April 15, 1946, made to William Miller, and bearing the endorsement in blank of William Miller.

[The certificate above referred to was marked Exhibit P-81, in evidence.]

Mr. Chazin: Next is certificate No. 10, the same corporation, 116 shares, dated June 7, 1946, made to William Miller, bearing the endorsement in blank of William Miller.

[The certificate above referred to was marked Exhibit P-82, in evidence.]

Mr. Chazin: Also certificate No. 11, Milmar Estates, Inc., 125 shares, made to William Miller, dated June 7, 1946, bearing the endorsement of William Miller in blank.

Excerpts from Deposition of Samuel Marcus

[The certificate above referred to was marked Exhibit P-83, in evidence.]

Mr. Chazin: Certificate No. 12, Milmar Estates, Inc., 125 shares, dated June 7, 1946, made to William Miller, and bearing the endorsement of William Miller in blank.

[The certificate above referred to was marked Exhibit P-84, in evidence.]

Mr. Chazin: Certificate No. 13, of Milmar Estates, Inc., 125 shares, dated June 7, 1946, made to William Miller, bearing the endorsement of William Miller in blank.

[The certificate above referred to was marked Exhibit P-85, in evidence.]

Mr. Chazin: All these five certificates on the face thereof are signed by Sam Marcus, President, and Robert J. Schwartz.

Mr. Tepper: Robert J. Schwartz, Secretary-Treasurer, right?

Mr. Chazin: Yes.

Q. Now, Mr. Marcus, do you have with you any other certificates of stock of Milmar Estates, Inc.? A. I do not.

Q. Have you looked through all your records for additional certificates? A. I have made a search.

Q. And you have not found any additional certificates? A. I have not.

Q. Referring to certificate Nos. 2, 6, 7, 8 and 9 originally issued to Sam Marcus, you do not have those certificates here with you? A. 2, 6, 7, 8 and 9?

Q. Yes. Referring to the numbers of the certificates as

they appear on Exhibit P-10, for identification. A. Let me see what they are.

Oh, 2, 6, 7, 8 and 9? No, I don't have those. No, I don't have those, no.

Q. Do you know where those certificates are? A. Yes, they are in Mr. Lieberman's possession.

Q. They were endorsed by you and turned over to Mr. Lieberman? A. They were turned over to Mr. Lieberman.

Q. On September 14, 1948? A. That's correct.

Q. Did you hand those to Mr. Schwartz to give to Mr. Lieberman or did you give them directly to Mr. Lieberman? A. To the best of my recollections I handed them directly to Mr. Lieberman. He was sitting opposite me at Mr. Schwartz's desk.

Q. Who else was present then? A. Mr. Miller, and I believe Mr. Schwartz was there too.

Q. That was at Mr. Schwartz's office in New York City? A. That's correct.

Q. His law office? A. That's correct.

Q. On September 14, 1948? A. That's correct.

Q. Have you located certificates 14 and 15? I refer to the numbers as they appear on Exhibit P-10 for identification. A. I have not as yet located those.

> Mr. Chazin: Certificates No. 14 and 15 I want to state for the record are certificates issued to Robert Schwartz, No. 14 being in the amount of 32 shares and No. 15 being in the amount of 93 shares.

Q. Have you inquired of your present secretary and your former secretaries as to whether they know where certificates 14 and 15 are? A. I have inquired from my former secretary.

Q. And her name is what? A. Mrs. Maginn, Adelaide Maginn.

Q. What did she tell you? A. She told me that she

called Mr. Schwartz constantly for the stock. And I had told her I had purchased the stock from Mr. Schwartz. And Mr. Schwartz said that he would bring over the stock to her.

Then in the final call she told me that he said, "I am to visit Mr. Marcus at his home tonight and I will bring the stock to him at his home." That is the last conversation she recalls having with Mr. Schwartz.

Q. And she does not know where the stock certificates are, referring to stock certificate Nos. 14 and 15? A. She has no definite recollection whether Mr. Schwartz did deliver them to her or not.

Q. Mr. Schwartz did not give them to you personally, did he? A. He did not.

Q. When were these conversations of your secretary with Mr. Schwartz; was that after that series of payments that you made to Mr. Schwartz? A. That was during the series of payments that I made to Mr. Schwartz, or possibly after. I really don't know when those conversations were other than I notified her I was making this purchase of stock from Mr. Schwartz and to follow through and obtain the stocks.

Q. Have you looked through all your records to ascertain whether you have those certificates, No. 14 and 15? A. I have searched as much as I could and have not been able to locate them at the present time.

Q. Have you looked at the Duane Street warehouse? A. I have. I have been down there.

Q. And you looked through there? A. I have looked through all records as I have been able to locate there.

Q. Well, there aren't any records that you did not look through, records of yours? A. It is possible I may have skipped something, but I feel that I have gone through everything there.

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Excerpts from Deposition of Samuel Marcus

Q. Have you found any more papers or records? A. I have not at the present time.

Q. Have you found any records of account or books of yours which have records of payment for the stock which you sold on September 14, 1948? A. I haven't found any records of that nature at all.

Q. Do you have any such books? A. I don't believe I have.

Q. Well, don't you know whether you have? A. I don't believe I have. I asked my accountant whether he had kept any records and he said no. He said, "I did not bother with your personal matters." So I believe there are no books in particular on this.

Q. You do not know of any books? A. I don't know of any books.

Q. Who is the accountant? A. My certified accountant.

Q. The one you spoke about? A. Well, I have one accountant in my Thirty-third Street store. His name is Henry Overt. And then I have a firm of accountants who do my auditing. That is the Dobkin Company.

Q. Neither of them have any books showing payments to you for the stock you sold on September 14, 1948? A. Neither of them have any records of that transaction.

Q. Do you have any books which have records of any transactions which you had with Milmar Estates, Inc., or Bill Miller's Riviera, Inc., or Bill Miller, or Al Kevelson, or Al Bierman? A. I do not. I do not believe I have.

Q. You have checked with your accountants? A. My accountants have told me they have no personal records of my transactions.

Q. And you do not have any books? A. I do not have any.

Q. Relating to any such transaction? A. I do not have any such books of that nature.

Q. And you do not have any records other than what

you brought in today and previously? A. I believe that is all I could locate at the present time.

Q. Do you think you could locate in the future something else? A. That is doubtful, but I am looking for something else.

Q. But you have made an effort to locate everything? A. I made an effort to find everything I could.

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Q. I show you a photostatic copy of certificate No. 17 of Milmar Estates, Inc., purporting to be made to Samuel Marcus, for 500 shares, dated September 14, 1948, and purporting to bear the signature of Samuel Marcus, President, and Robert J. Schwartz, Secretary-Treasurer, and purporting to have an endorsement in blank of Samuel Marcus. I want to ask you whether the signatures on the front right-hand corner bottom and on the back are your signatures? A. I believe they are.

Mr. Chazin: I would like to have this marked for identification and put in evidence.

[The photostat of certificate No. 17 was marked Exhibit P-146.]

Q. I want to ask you the same question with regard to certificate No. 19 for 125 shares. A. This appears to be my signature.

Q. Mr. Marcus, do you remember signing this certificate No. 17? A. I do not have any recollections of signing them.

Q. And do you remember signing this certificate No. 19? A. I do not have any recollections of signing them.

Q. Do you remember endorsing in blank certificate No. 17? A. I do not.

Q. Do you remember endorsing in blank certificate No. 19? A. I do not.

Excerpts from Deposition of Samuel Marcus

Q. Mr. Marcus, I call your attention that these two certificates bear the date of September 14, 1948. Do you have any recollection at all as to how your signature came to be on these certificates? A. I don't recall signing those certificates.

Q. Do you have any recollection at all as to how your signature came on the back of these certificates? A. At this moment I have no recollection of signing these certificates.

Q. Does seeing these certificates refresh your recollection at all as to how your signature got on them? A. They do not.

Q. So that you have no recollection at all of having signed these certificates? A. I can't recall signing those certificates at all.

Q. Do you recall signing any other papers on September 14, 1948? A. Oh, I signed a raft of papers that day.

Q. Do you recall signing any other certificates of stock of Milmar Estates, Inc. on that date? A. The only thing I recall is endorsing these certificates that I held and turning them over to Mr. Lieberman.

Q. When you say these certificates you held, certificates of what number are you referring to? A. That would represent Nos. 2, 6, 7, 8 and 9.

Q. You do not recall signing any new certificates? A. I do not.

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Q. Do you have any other checks or records of moneys you loaned to Miller? A. I do not have them available. I think I brought you some checks the last time.

Q. I am not referring to what you brought in previously. A. I haven't located any additional checks at the present time.

Q. Well, do you have any? A. There may be.

Q. Well, have you looked through all your records? A.

Excerpts from Deposition of Samuel Marcus

I have looked through all the records I have available and I could find no others.

Q. You looked thoroughly? A. I have looked thoroughly.

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Q. Have you brought with you any other records, papers, relating to this which we have not examined? A. I have not.

Q. Do you have any other records? A. I don't know where to search for any other records at this time.

Q. You have looked every place? A. I have looked every conceivable place I could think of where I might locate records.

Q. Do you have any other records of moneys loaned or advanced by you to Milmar Estates or Bill Miller's Riviera, or Bill Miller, or Al Bierman? A. I have looked for those records, and up to the present time I have not been able to locate any other records than what I produced up to this time.

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Q. You testified during the last hearing that you were not in any way interested in Mocambo except as a creditor, is that right? A. That's right.

Q. And that you were never a stockholder? A. That's correct.

Q. And you never acquired any of its stock? A. I never owned any of its stock outright.

Q. Did you ever own any of the stock not outright? A. I hold stock as collateral for loans.

Q. You hold stock of Mocambo as collateral for loans to whom? A. To Mr. Miller.

Q. Mr. Miller only? A. I held Mr. Miller's stock in Mocambo as collateral for loans.

Q. Anyone else's stock? A. I don't believe I held anybody else's stock.

Excerpts from Deposition of Samuel Marcus

Q. Did you ever hold David Parris stock? A. I may have for a time.

Q. What is your present recollection? A. To the best of my recollections I can't recall at this time whether I did or not.

Q. When you say collateral, you mean the loans that you testified during the last hour that you made? A. I made a number of personal loans to Mr. Miller, other than what I made to Mocambo for which he gave me his stock as collateral.

Q. What about David Parris? A. I don't recall whether I have held his stock as collateral or not.

Q. Who is I. J. Friedland? A. I. J. Friedland, I don't know him at all.

Q. You never heard of the name? A. The name does not bring any recollections to me.

Q. When did you last part with the possession of this Mocambo stock which you held as collateral?

Mr. Tepper: You are speaking of the stock he has testified to?

Mr. Brigadier: Yes.

A. I believe that stock may still be in my possession.

Q. As collateral still for the loans that you made? A. Well, it is of no value. The corporation is defunct. It went in bankruptcy.

Q. Since we had the difficulty of the meaning of words, what did you mean by the word collateral when you employed it here? A. Well, I would make him a loan and he gives me that stock as security for the repayment of that loan.

Q. You saw that that stock at least has an endorsement on it to you? A. Yes.

Q. So that you could use that stock to satisfy the loan? A. That's right.

Q. And you know it is as security for the loan, is that right? A. I felt that was security for the loan, yes.

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Excerpts from Deposition of Al Kevelson

AL KEVELSON, called as a witness in behalf of Samuel Marcus, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grosman:

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Q. Can you tell us, please, why the present interpleader suit was brought?

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A. Yes, sir. We started that suit—when I say "we" I am referring to Mr. Miller and Mr. Bierman—because of the fact that they made a contract with Milmar Estates to pay them, and the money was going direct to Samuel Marcus. And we felt that if at any time Milmar Estates would get into any trouble, and should there be a receiver appointed, Milmar Estates can turn around to Mr. Miller and Mr. Bierman and demand the money of that contract that he made with Milmar Estates.

Mr. Brigadier: Judge Grosman, in view of my interruption, it is very obvious that the witness is giving you actually an opinion furnished by me, and I think that the record may not show you that, that actually that is what happened. I am not trying to testify, I am just trying to tell you that the interruption may mislead you, and that is why I am trying to make it clear to you, that the witness is probably assuming that his answer is now based on my interruption.

Excerpts from Deposition of Al Kevelson

Q. Well, was there any question as to the propriety of having paid Mr. Marcus this money? A. What do you mean? I don't understand the question.

Q. Did the question come up in connection with your decision to file this suit? A. Well, we wanted to cover ourselves from all angles. We saw the dealings that we had with dower rights, and we felt that God knows who we are dealing with, with a man who is unscrupulous in his methods, his words don't mean nothing, it is nothing for him to tell lies, and to do things that are very, very ungentlemanly, and we just figured that God knows what is the next trick he will pull out. We only know to do things in the right way.

Q. Well, was there any doubt in your mind as to the propriety of the corporation carrying out this contract, P-4? A. Oh, we knew we were going to fulfill the contract. No question about it.

Q. There was no doubt in your mind that the Milmar Estates would fulfill the contract, was there? A. Well, we wouldn't—a 100 per cent, we were going to pay it. But we didn't know what would come up, and we just wanted to be careful, because we were dealing with a man who we see is very, very unscrupulous.

Q. Well, now, you, Mr. Bierman and Mr. Miller were in exclusive charge of Milmar Estates, Inc., were you not? A. That's correct.

Q. Why was it necessary to make Milmar Estates, Inc., a party to this suit, in view of the fact that you controlled Milmar? A. Well, I don't know why it was necessary to make it. I imagine that is a legal matter.

Q. As a matter of fact, you could have made Milmar Estates, Inc., do whatever you three gentlemen thought proper; isn't that so? A. We were running the business of Milmar, we certainly can do. But we discussed it with attorneys and that was the way we decided to do it.

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Excerpts from Deposition of William Miller

WILLIAM MILLER, called as a witness in behalf of Samuel Marcus, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grosman:

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Q. I see. Now, you know about this suit, this interpleader suit having been brought in this Court. A. Yes, I do.

Q. And did you give that matter some thought before you brought the action? A. Yes, I did.

Q. Did you discuss the matter with Mr. Bierman? A. Yes, I did.

Q. He was available? A. Yes.

Q. He wasn't on the road. A. Maybe he was on the road, but I discussed it with him by telephone. I don't know whether it was in person, but I discussed it with him.

Q. And did you discuss it with Mr. Kevelson? A. Yes, I did.

Q. And did you discuss it with counsel? I am not asking you to tell what you said to counsel, but did you discuss it? A. Yes, I did.

Q. And you received legal advice before you instituted the present suit, right? A. That's correct.

Q. Now, do you know what the purpose of the present suit in this Court happens to be? A. Yes.

Q. What is it? A. I think I know—which was explained to me by my attorney—

Q. Yes. A. —he said that when you put everything into Milmar—or the way the Judge took care of this thing and arranged these papers, in the event—"I know your intentions are good, but in the event of a bankruptcy, or a receiver was appointed, a receiver could come in and make you pay this $125,000 again by saying the corporation had no right to pay Marcus. And you could be—you and Bier-

man could personally be made to pay that money again."

Q. And is that what you sought to avoid— A. That's correct.

Q. —when you instituted this suit? A. That's right.

Q. You were trying to avoid personal liability. A. That's correct.

Mr. Abraham Chazin: That isn't what the witness said. He said paying again.

Q. Now, counsel said I am not quoting you properly. A. That's correct.

Q. I don't want to misquote you. You sought to avoid liability by filing this suit. A. That's correct.

Q. Liability on whose part? A. On Milmar Estates.

Q. If the Milmar Estates were to go in the hands of a receiver, Milmar Estates might be liable to somebody? A. I am not an attorney.

Q. I know. A. I am just trying to explain to you that I was told—whether it was Milmar, myself, I don't know—he just told me that he is starting a suit so that in case there is a receiver appointed that Milmar Estates—which I imagine it must have been Milmar Estates—that they'd have to pay it twice.

Q. Milmar would have to pay it twice. A. I imagine it would be Milmar. I don't know. I am not an attorney.

Q. Not you, not the directors— A. I don't care who. Milmar was our corporation. I was protecting our corporation.

Q. Well, now, look, there is a difference. Do you know that there is a difference— A. I don't know.

Q. Let me finish, please. Do you know that there is a difference between Milmar Estates, the corporation, and William Miller, and the other stockholders and directors; you know there is a difference? A. Yes.

Q. Now, who was to be protected and against what by

the filing of this suit? A. Milmar Estates was to be protected.

Q. That is what you were told? A. I believe so.

Q. Not you and the remaining stockholders and directors personally? A. I don't know.

Q. You weren't being protected. A. I don't know who was being protected. All I know is when he said that there is a chance of this thing being paid twice—whether it was me, Milmar, or someone, I didn't want to pay it twice. I thought once is enough to pay any debt, not twice.

Mr. Abraham Chazin: I think the witness has explained it, Judge.

Mr. Grosman: If he has, it hasn't penetrated my thick skull.

Q. Now, this suit was filed on December 28, 1950. And was there any danger of Milmar Estates being declared bankrupt at that time? A. Cafe business is a very treacherous business. Nobody gives you a guarantee. And there is always a danger, in a business of this type, of something going wrong. And I thought it would be a good thing to have protection.

Q. Was the Milmar Estates, Inc., on December 28, 1950, solvent? A. Oh, yes.

Q. That was more than two years after the agreement, P-4, had been signed? A. Yes.

Q. Were you afraid that the corporation might be declared bankrupt upon a suit of somebody? A. I have always taken the advice of my attorney, and if my attorney said we ought to protect ourselves, I told him to go ahead.

Q. What was the condition of Bill Miller's Riviera on December 28, 1950, financially; was it in good shape? A. I imagine it was.

Q. You had gotten rid of Marcus and you were running it

yourself. I take it that you made a success of it, right? A. I think so.

Q. On December 28, 1950. A. Yes, we were meeting our obligations.

Q. Were you being threatened with suit by anybody? A. No.

Q. Or with bankruptcy, the filing of a bankruptcy petition against you? A. No.

Q. Now, as a matter of fact, you and Mr. Bierman, and Mr. Kevelson, were actually operating Milmar Estates, Inc., weren't you? A. That's correct.

Q. You did what you saw fit with it, without interference by Mr. Marcus. A. Of course.

Q. And on December 28, 1950, you and Mr. Bierman, and, I take it, Mr. Kevelson, were directors? A. That's correct.

Q. And officers of the corporation? A. Correct.

Q. And you authorized the bringing of this suit, did you,— A. Yes.

Q. —against the corporation which you were controlling— A. That's correct.

Q. —because you thought that in a bankruptcy proceeding somebody might be held liable for the payment of this.

Mr. Brigadier: I object. The witness did not testify because he thought—because he had been advised by counsel.

Q. Well, did you believe what your lawyer had told you with respect to the need for bringing this suit? A. I certainly did.

Q. So you authorized—you and your associates authorized the bringing of this suit. A. That's correct.

Q. Against your own corporation. A. Any way that my lawyer saw fit to handle it.

Q. Well, did your lawyer set this thing up? A. That's correct.

Excerpts from Deposition of William Miller

Q. And you went along. A. That's right.

Q. Now, as a matter of fact, shortly before that you and your associates had had some differences with Mr. Marcus with respect to some dower interest that his wife held in the real estate owned by Milmar Estates. A. That's correct.

Q. And you started a suit against her, or against him?

Mr. Brigadier: I object, unless you identify what the "you" is. You mean that the corporation started this suit, or he, individually? The record actually is the best evidence. And you know the record shows that it was started by Milmar Estates.

Mr. Grosman: I don't know. I never saw that record.

Mr. Brigadier: Your associate, who was counsel for Mrs. Marcus in the case, certainly—

Mr. Grosman: He hasn't told me.

Mr. Brigadier: Well, it would seem to me that the knowledge of an associate in the case, who is attorney of record, ought to be imputed to his colleague.

Mr. Tepper: Off the record.

(Discussion off the record.)

Q. You remember that suit, Mr. Miller. A. Yes.

Q. You and the directors of Milmar Estates, Inc., authorized the bringing of that suit? A. Yes.

Q. Now, you finally paid Mrs. Marcus some money for her signature,— A. Correct.

Q. —wiping out, or conveying her interests, whatever it may be, in the Milmar properties? A. Yes, sir.

Q. Now, you and your associates were quite put out over the fact that you had to pay that money to Mrs. Marcus. A. No, we were quite put out that we were dealing with a man who had no principles.

Excerpts from Deposition of William Miller

Q. And the man you refer to is— A. Is Mr. Samuel Marcus.

(Discussion off the record.)

Q. Now, tell me, Mr. Miller, do you remember when these two suits were brought, one with respect to dower, and one, this interpleader suit? A. Excuse me. Off the record. I just heard the conversation, and I just found out.

Mr. Brigadier: If you don't know, say you don't know.

A. I don't know.

Q. But you do know that you and your associates, acting as directors of Milmar Estates, Inc., did authorize the bringing of both suits? A. Yes.

Mr. Abraham Chazin: The witness did not say that, that acting as directors they authorized the bringing of both suits.

Mr. Grosman: How else could they authorize the bringing of suits?

Mr. Brigadier: The first suit was not brought by the corporation.

Mr. Abraham Chazin: You know that the first suit was brought by Miller and Bierman as individuals. Therefore, it is not authorized by the corporation. And he didn't say it was authorized by the directors of the corporation

Mr. Grosman: He did say it, yes, in response to my question.

Mr. Brigadier: There isn't any doubt about it.

Mr. Abraham Chazin: He has been answering your questions before they are asked.

Mr. Brigadier: That is not the fault of Judge Gros-

man that he does that. You can't put that at his door.

Mr. Grosman: I know you have been annoyed with Mr. Miller, the way he has been answering.

Mr. Abraham Chazin: I wouldn't say that.

Mr. Grosman: I would take it from what you just said that you are annoyed.

Mr. Brigadier: I would suggest that this colloquy come to a stop.

The Witness: I would just suggest that this only proves how little I know about corporation law.

Mr. Brigadier: I think it suggests that you do answer the question before you hear it.

The Witness: Yes. Or of my knowledge--I know what happened. That is all I am interested in.

Mr. Brigadier: Listen to the question the next time.

Q. Now, it is quite evident, Mr. Miller, that the present suit, the interpleader suit, was not brought by Milmar Estates, it was brought by you and Mr. Bierman, individually. A. That's correct.

Q. I didn't want to mislead you. A. Well, I am glad.

Q. But the first suit, with respect to the dower, was brought by the corporation.

Mr. Brigadier: That is not the first suit. It happens to be the second suit. You see, you do that.

Q. The second suit, or the suit with respect to the dower right, was brought by the corporation. A. I believe so. I don't know.

Q. Don't you know that? A. No, I don't.

Q. Now, isn't it a fact that when you and your co-directors of Milmar Estates, Inc., were made aware of the fact that there was an outstanding dower right in Mrs. Marcus, you sought to obtain that from Mrs. Marcus with-

out any payment to her; is that right? A. Let me answer it this way,—

Q. All right. You answer in your own way. A. —that when I was notified in trying—by other attorneys—that Mrs. Marcus didn't sign the dower papers, which are necessary in New Jersey, the State of New Jersey, that I immediately called Mr. Marcus and told him that he didn't live up to his agreement, that he had promised me that he would give me a free and clear title, and he said he would get me a letter from Mrs. Marcus, inasmuch as he was on the original mortgage, and we were taking him off the mortgage, and taking him off the responsibility of $235,000, and he promised to get me the paper. And after a while I found out that he never got me the paper. So I also came to a decision that anything that this man says to you, verbally, can't be trusted. He can't be trusted. And I started to protect myself. And I thought it would be a good idea to go to an attorney. And when the attorney read the papers, and everything that I had, he told me at that time that he should start a suit because in case a receiver—or anything was to happen, I could be made to pay twice for this thing. And I said, "Well, I will leave it to you. You handle it any way you say. You are my attorney. If you think you should start a suit, you go ahead." And that is how the suit started.

Q. Both suits? A. No, one suit. And then they followed up, and did whatever they thought—whatever was necessary, that they thought was necessary for me to do in order for me to have myself clear.

Q. Now, you said that other attorneys told you of this outstanding dower right, and the signature of Mrs. Marcus required to relinquish that right in New Jersey. You mean other attorneys than Chazin & Chazin? A. Yes.

Q. And who were they? A. They were the attorneys who were taking care of the mortgage.

Excerpts from Deposition of William Miller

Q. Who were they? A. I don't remember the name. He is dead now, so it makes no difference.

Q. Then you went to Mr. Abraham Chazin, I take it. A. That's correct.

Q. And authorized him to proceed with it. A. To proceed with any way he thought it was best for my protection.

Q. And— A. And I followed his advice.

Q. But you were primarily concerned with this outstanding dower right. A. I was primarily concerned with the fact that I didn't want to pay a thing twice. I thought once is enough to pay a debt.

Q. Had you been asked by Mr. Marcus to pay it over again? A. No.

Q. Or by anyone else? Your answer is?

The Witness: Off the record, please. You asked me why I get worked up. Now, you know, don't you?

Mr. Abraham Chazin: Just a minute. Off the record.

(Discussion off the record.)

Mr. Grosman: Will you read the last question?

(Question read as follows: "Or by anyone else? Your answer is?")

A. No.

Mr. Brigadier: That's all. That's all it takes.

Q. Is that the only reason why you and Mr. Bierman authorized the bringing of the present suit of interpleader?

Mr. Abraham Chazin: The witness has testified that he authorized the suit on the advice of counsel. He has already answered that three or four times.

Excerpts from Deposition of William Miller

Mr. Brigadier: Now he is asking if that is the only reason, and he can ask it.

A. Yes.

Q. Can you tell us why Mr. Al Kevelson was not a party to this present interpleader suit? A. I saw Mr. Chazin and Mr. Brigadier—

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A. (Continuing.) And I followed the advice of counsel.

Q. When you say "counsel", who do you mean? A. Mr. Chazin.

Q. Now, when did you see Mr. Brigadier, before this suit was brought or after? A. I don't remember.

Q. Who took you to Mr. Brigadier? A. I don't remember.

Q. Are you sure about that? A. Positive.

Q. Did you go there yourself? A. I don't remember.

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Excerpts from Deposition of Al Bierman

AL BIERMAN, called as a witness in behalf of Samuel Marcus, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grosman:

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Q. Now then, let's get down to the present suit. You are a plaintiff—one of the plaintiffs in this case, are you? A. Yes.

Q. And who is your lawyer in this case? A. Chazin & Chazin.

Q. And did you discuss this suit with Mr. William Miller before you brought it, the present suit,— A. Yes.

Q. —in this Court? A. Yes.

Excerpts from Deposition of Al Bierman

Q. And what was the purpose of your bringing this action? A. Protection.

Q. Against what? A. Well, I don't know how to—you fellows, lawyers, talk about terms, but all I know is—

Q. You tell us in your own terms. A. I wanted protection.

Q. Against what? A. Well, in the event that—we were paying money, paying out money—that is Milmar—and supposing Mr. Miller lost his license and—

Q. License to do what? A. To run the Riviera. And the club was closed—we couldn't collect rent—was going bankrupt, they would go in bankruptcy, we wouldn't be able to get any money. We could go bankrupt. Some receiver might come along and want to charge us all that money over again. We wanted protection.

Q. What money? A. That we were paying out.

Q. To whom? A. To Sam Marcus.

Q. You wanted protection against Sam Marcus?

Mr. Abraham Chazin: The witness did not testify to that, Judge. He said if a receiver was appointed. And I object to your question it is based on an assumption contrary to his testimony.

Q. You wanted protection against the money that you had been paying to Mr. Samuel Marcus. A. Yes, sir.

Q. Well, you hadn't paid him any money, had you? A. Well, I certainly have.

Q. Who was paying him the money? A. Mr. Kevelson and I.

Q. How much money had you paid Mr.— A. I don't remember right offhand how much I paid him.

Q. —Mr. Marcus; how much money had you paid him? A. At that particular time?

Q. Yes. A. I don't remember.

Excerpts from Deposition of Al Bierman

Q. The time that you instituted this suit, you authorized the institution of this suit. A. I don't remember right offhand how much money I had paid in. Mr. Kevelson has a record over there.

Q. Well, did you get the money from Mr. Kevelson, or was it your own money? A. Some of it was my own. Some was Mr. Kevelson's.

Q. How much was your own? A. The total amount?

Q. Yes. A. I don't know.

Q. You don't know how much money you paid to Mr. Marcus on account of what you term is the stock that you bought from him? A. Right at this moment, I don't know. I can get it.

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